Federal Register

4–5–04 Monday
Vol. 69 No. 65 Apr. 5, 2004

United States
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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

4–02–05 Monday
Vol. 69 No. 65 Apr. 5, 2004

Pages 17585–17898

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Furosemide; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approved salts of injectable furosemide. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Punderson, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4109, e-mail: *jeffrey.punderson@fda.gov.*

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not correctly identify the monoethanolamine salt of furosemide sponsored by Boehringer Ingelheim Vetmedica, Inc., and approved under NADA 127–034 and NADA 131–538. This error occurred with the approval of NADA 127–034 (49 FR 26715, June 29, 1984). This document amends the regulations in 21 CFR 522.1010 to correct this error.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting a nonsubstantive error.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1010 is amended by revising paragraphs (a) and (b) to read as follows:

§ 522.1010 Furosemide.

(a) *Specifications*—(1) Each milliliter (mL) of solution contains 50 milligrams (mg) furosemide monoethanolamine.

(2) Each mL of solution contains 50 mg furosemide diethanolamine.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use of products described in paragraph (a) of this section for use as in paragraph (d) of this section.

(1) No. 000010 as described in paragraph (a)(1) of this section for use as in paragraphs (d)(1) and (d)(2)(ii) of this section.

(2) No. 061623 as described in paragraph (a)(2) of this section for use as in paragraph (d)(2)(ii) of this section.

(3) Nos. 057926 and 059130 as described in paragraph (a)(2) of this section for use as in paragraphs (d)(1), (d)(2)(i), and (d)(3) of this section.

* * * * *

Dated: March 19, 2004.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 04–7534 Filed 4–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Penicillin G Procaine Aqueous Suspension; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approved preslaughter withdrawal period in cattle following use of a penicillin G procaine injectable suspension. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Punderson, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4109, e-mail: *jeffrey.punderson@fda.gov.*

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect the preslaughter withdrawal period in cattle for Penicillin G Procaine Aqueous Suspension sponsored by G.C. Hanford Manufacturing Co. and approved under NADA 065–493. This error was introduced into the regulations when sections for certain pencillin-containing products were recodified (57 FR 37318, August 18, 1992). At this time, the regulations are being amended in 21 CFR 522.1696b to correct this error.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting a nonsubstantive error.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1696b [Amended]

■ 2. Section 522.1696b *Penicillin G procaine aqueous suspension* is amended in paragraph (d)(2)(iii)(A) by removing "010515," and in paragraph (d)(2)(iii)(B) by removing "No. 055529" and by adding in its place "Nos. 010515 and 055529".

Dated: March 19, 2004.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 04–7606 Filed 4–4–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9115]

RIN 1545–BC27

Depreciation of MACRS Property That Is Acquired in a Like-Kind Exchange or as a Result of an Involuntary Conversion; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations that were published in the **Federal Register** on Monday, March 1, 2004 (69 FR 9529) relating to the depreciation of property subject to section 168 of the Internal Revenue Code.

DATES: This correction is effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Charles J. Magee, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9115) that are the subject of these corrections are under sections 168, 1031 and 1033 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9115) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the temporary regulations (TD 9115), that were the subject of FR Doc. 04–3992, is corrected as follows:

■ 1. On page 9533, column 1, in the preamble under the paragraph heading "*Effect on Other Documents*", second paragraph, line 2, the language, "relinquished or an acquired MACRS" is corrected to read "relinquished or acquired MACRS".

§ 1.168(a)–1T [Corrected]

■ 2. On page 9533, column 2, § 1.168(a)–1T(c), the last line of the paragraph, the language, "expires on or before February 27, 2007." is corrected to read "expires on or before February 26, 2007.".

§ 1.168(b)–1T [Corrected]

■ 3. On page 9533, column 3, § 1.168(b)–1T(b)(2), the last line of the paragraph, the language, "expires on or before February 27, 2007." is corrected to read "expires on or before February 26, 2007.".

§ 1.168(d)–1T [Corrected]

■ 4. On page 9534, column 2, § 1.168(d)–1T(d)(3)(ii), the last line of the paragraph, the language, "expires on or before February 27, 2007."is corrected to read "expires on or before February 26, 2007.".

§ 1.168(i)–1T [Corrected]

■ 5. On page 9536, column 2, § 1.168(i)–1T(l)(3)(ii), the last line of the paragraph, the language, "expires on or before February 27, 2007."is corrected to read "expires on or before February 26, 2007.".

§ 1.168(i)–6T [Corrected]

■ 6. On page 9537, column 1, § 1.168(i)–6T(k)(2), the language, "(2) Application to pre-effective date like-kind exchanges and involuntarily conversions."is corrected to read "(2) Application to pre-effective date like-kind exchanges and involuntary conversions.".

■ 7. On page 9539, column 2, § 1.168(i)–6T(c)(4)(v)(A), lines 24 and 38, the language, "involuntarily conversion of MACRS" is corrected to read "involuntary conversion of MACRS".

■ 8. On page 9540, column 1, § 1.168(i)–6T(c)(5)(iii)(A), line 5, the language, "property depreciation is not allowable" is corrected to read "property, taking into account the applicable convention of the relinquished MACRS property and replacement MACRS property, depreciation is not allowable".

■ 9. On page 9540, column 1, § 1.168(i)–6T(c)(5)(iii)(A), line 17, the language, "in paragraph (c)(5)(ii)(A)(2) of this" is corrected to read "in paragraph (c)(5)(ii)(A)(*2*) of this".

■ 10. On page 9542, column 1, § 1.168(i)–6T(d)(3)(ii)(C), line 7, the language, "excess of the sum of the amounts" is corrected to read "excess over the sum of the amounts".

■ 11. On page 9542, column 1, § 1.168(i)–6T(d)(3)(ii)(C), line 9, the language, "and (B) of this section over the smaller" is corrected to read "and (B) of this section of the smaller".

■ 12. On page 9542, column 2, § 1.168(i)–6T(d)(3)(iii), *Example 1.*, lines 27 thru 29, the language, "section 280F limit for 2003 for the Automobile Y) $1,775 (the depreciation allowable for Automobile X for the 2003)) the is corrected to read section 280F limit for 2003 for Automobile Y) $1,775 (the depreciation allowable for Automobile X for 2003)) the".

■ 13. On page 9542, column 2, § 1.168(i)–6T(d)(3)(iii), *Example 1.*, line 38, the language, "depreciation deduction of $278 is allowable" is corrected to read "depreciation deduction of $277 is allowable".

■ 14. On page 9542, column 2, § 1.168(i)–6T(d)(3)(iii), *Example 1.*, lines 46 thru 47, the language, depreciable excess basis of $14,722 ($15,000 (excess basis)—$278 (additional first year is corrected to read depreciable excess basis of $14,723 ($15,000 (excess basis)—$277 (additional first year".

■ 15. On page 9542, column 3, § 1.168(i)–6T(d)(3)(iii), *Example 2.*, line 5, the language, "12), the depreciation allowable that would be" is corrected to read "12), the depreciation that would be".

■ 16. On page 9544, column 3, § 1.168(i)–6T(e)(4), *Example 3.*, line 20, the language, "insurance proceeds received due to loss of" is corrected to read "insurance proceeds received due to the loss of".

■ 17. On page 9545, column 3, § 1.168(i)–6T(k)(1)(ii), line 2, the language, "expires February 27, 2007."is corrected to read "expires on or before February 26, 2007.".

§ 1.168(k)–1T [Corrected]

■ 18. On page 9547, column 1, § 1.168(k)–1T(f)(5)(v), *Example 5.*, paragraph (i), line 18, the language,

"Equipment Y3 for Equipment Z3, the" is corrected to read "Equipment Y3 for Equipment Z1, the".

■ 19. On page 9547, column 2, § 1.168(k)–1T(g)(3)(ii), the last line of the paragraph, the language, "February 27, 2007."is corrected to read "February 26, 2007.".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 04–7514 Filed 4–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1981

RIN 1218–AC12

Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety Improvement Act of 2002

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides the text of regulations governing the employee protection ("whistleblower") provisions of Section 6 of the Pipeline Safety Improvement Act of 2002 ("Pipeline Safety Act"), enacted into law December 17, 2002. This rule establishes procedures and time frames for the handling of discrimination complaints under the Pipeline Safety Act, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration ("OSHA"), investigations by OSHA, appeals of OSHA determinations to an administrative law judge ("ALJ") for a hearing *de novo*, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on April 5, 2004. Comments on the interim final rule are due on or before June 4, 2004.

ADDRESSES: Submit written comments to: OSHA Docket Office, Docket No. C11, Room N2625, U.S. Department of Labor–OSHA, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience, comments may be transmitted by facsimile ("FAX") machine to (202) 693–1648 (not a toll-free number) or by electronic means through the Internet at *http://www.ecomments.osha.gov*. All comments should reference Docket No. C11. If commenters transmit comments by FAX or through the Internet and also submit a hard copy by mail, please indicate on the hard copy that it is a duplicate copy of the FAX or Internet transmission.

FOR FURTHER INFORMATION CONTACT: Thomas Marple, Director, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline Safety Improvement Act of 2002 ("Pipeline Safety Act"), Public Law 107–355, was enacted on December 17, 2002. Section 6 of the Act, codified at 49 U.S.C. 60129, provides protection to employees against retaliation by an employer, defined as a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, because they provided information to the employer or the Federal Government relating to Federal pipeline safety violations or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any Federal law relating to pipeline safety, or because they are about to take any of these actions. These rules establish procedures for the handling of whistleblower complaints under the Pipeline Safety Act. In drafting these regulations, consideration has been given to the regulations implementing the whistleblower provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"), codified at 29 CFR part 1979; the Surface Transportation Assistance Act ("STAA"), codified at 29 CFR part 1978; and the Energy Reorganization Act ("ERA"), codified at 29 CFR part 24, where deemed appropriate.

II. Summary of Statutory Provisions

The Pipeline Safety Act whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged discrimination, a complaint with the Secretary of Labor ("the Secretary").[1] Upon receipt of the complaint, the Secretary must provide written notice both to the person or persons named in the complaint alleged to have violated the Act ("the named person") and to the Secretary of Transportation of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the named person throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation. However, the Secretary may conduct an investigation only if the complainant has made a *prima facie* showing that the alleged discriminatory behavior was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior. This provision is similar to the whistleblower provisions of AIR21, codified at 49 U.S.C. 42121, which were incorporated by reference into the whistleblower provisions of the Sarbanes-Oxley Act, codified at 18 U.S.C. 1514A; and the 1992 amendments to the ERA, codified at 42 U.S.C. 5851.

After investigating a complaint, the Secretary will issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings, along with a preliminary order which requires the named person to: Take affirmative action to abate the violation, reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 5–2002 (67 FR 65008, October 22, 2002); Secretary's Order 1–2002 (67 FR 64272, October 17, 2002). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. See Secretary's Order 1–2002.

the complainant, as well as costs and attorney's and expert fees reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued. The complainant and the named person then have 60 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under the Pipeline Safety Act will stay any remedy in the preliminary order except for preliminary reinstatement. This provision for preliminary reinstatement after the investigation is similar to the employee protection provision of AIR21, 49 U.S.C. 42121, the Sarbanes-Oxley Act, 18 U.S.C. 1514A, and STAA, 49 U.S.C. 31105. If a hearing before an administrative law judge is not requested within 60 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, the Pipeline Safety Act requires the hearing to be conducted "expeditiously." The Secretary then has 90 days after the "conclusion of a hearing" in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the named person may enter into a settlement agreement which terminates the proceeding. At the complainant's request, the Secretary will assess against the named person a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer a reasonable attorney's fee, not exceeding $1,000, if he or she finds that the complaint is frivolous or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. Finally, the Pipeline Safety Act makes persons who violate these newly created whistleblower provisions subject to a civil penalty of up to $1,000. This provision is administered by the Secretary of Transportation.

III. Summary and Discussion of Regulatory Provisions

Section 1981.100 Purpose and Scope

This section describes the purpose of the regulations implementing the Pipeline Safety Act and provides an overview of the procedures covered by these new regulations.

Section 1981.101 Definitions

In addition to general definitions, the regulations contain the Pipeline Safety Act definition of "employer," and the statutory definitions of "gas pipeline facility," "hazardous liquid pipeline facility," "person," and "pipeline facility" codified in chapter 601 of subtitle VIII of title 49 of the United States Code.

Section 1981.102 Obligations and Prohibited Acts

This section describes the several categories of whistleblower activity that are protected under the Act and the type of conduct that is prohibited in response to any protected activity. As under the ERA and the environmental whistleblower statutes listed at 29 CFR 24.1(a), refusals to engage in practices made unlawful under applicable Federal law relating to the industry in which the employee is employed are protected activities under the Act if the employee has identified the alleged illegality to the employer. 42 U.S.C. 5851(a)(1)(B); *Timmons* v. *Franklin Electric Cooperative*, Case No. 97–141, 1998 WL 917114 (DOL Adm. Rev. Bd, Dec. 1, 1998); 29 CFR 24.2(c)(2). The employee does not have to prove that the allegedly illegal practice actually violated a Federal pipeline safety law. *See Gilbert* v. *Federal Mine Safety & Health Review Commission*, 866 F.2d 1433, 1439 (D.C. Cir. 1989). The employee must only prove that the refusal to work was properly communicated to the employer and was based on a reasonable and good faith belief that engaging in that work was a practice made unlawful by a Federal law relating to pipeline safety. *See Liggett Industries, Inc.* v. *Federal Mine Safety and Health Review Commission*, 923 F.2d 150, 151 (10th Cir. 1991); *Eltzroth* v. *Amersham Medi-Physics, Inc.*, Case No. 98–002, 1999 WL 232896 *9 (DOL Adm. Rev. Bd, Apr. 15, 1999).

Section 1981.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint under the Pipeline Safety Act. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks*, 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service*, 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under the Act must be made in writing, but do not need to be made in any particular form. With the consent of the employee, complaints may be made by any person on the employee's behalf.

Section 1981.104 Investigation

The Pipeline Safety Act contains the statutory requirement that a complaint shall be dismissed if it fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the statutory requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. As under AIR21 and Sarbanes-Oxley, upon receipt of a complaint in the investigating office, the Assistant Secretary notifies the named person of these requirements and the right of each named person to seek attorney's fees from an ALJ or the Administrative Review Board if the named person alleges that the complaint was frivolous or brought in bad faith.

Under this section also, the named person has the opportunity within 20 days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of its position. If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that an award of preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within 10 business days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments as to why preliminary

relief is not warranted. This section provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.*, 481 U.S. 252 (1987).

Section 1981.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding whether there is reasonable cause to believe that the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief. The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 60 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed. OSHA notes legislative history under the Pipeline Safety Act indicating that Congress intended to assure that the mere filing of an objection would not automatically stay the preliminary order, but that an employer could file a motion for a stay. 148 Cong. Rec. S11068 (Nov. 14, 2002).

Where the named party establishes that the complainant would have been discharged even absent the protected activity, there would be no reasonable cause to believe that a violation has occurred. Therefore, a preliminary reinstatement order would not be issued. Furthermore, as under AIR21, a preliminary order of reinstatement would not be an appropriate remedy where, for example, the named party establishes that the complainant is, or has become, a security risk based upon information obtained after the complainant's discharge in violation of the Pipeline Safety Act. In *McKennon* v. *Nashville Banner Publishing Co.*, 513 U.S. 352, 360–62 (1995), the Supreme Court recognized that reinstatement would not be an appropriate remedy for discrimination under the Age Discrimination in Employment Act where, based upon after-acquired evidence, the employer would have terminated the employee upon lawful grounds. Finally, in appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such "economic reinstatement" frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters.*, Inc., 23 FMSHRC 697, 2001 WL 1806020 **1 (June 26, 2001). "Economic reinstatement" also might be appropriate on those occasions in which an employer can establish that sufficient independent grounds exist for staying an immediate order of preliminary reinstatement.

Section 1981.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC, within 60 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing; if the filing of objections is made in person, by hand-delivery or other means, the date of receipt is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ.

Section 1981.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR part 18, subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary.

Section 1981.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and OSHA's participation in the administrative litigation is not a prerequisite for the protection of the public interest served by these proceedings. The Department believes this is likely to be the situation in cases involving allegations of retaliation for providing pipeline safety information. Therefore, this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative litigation. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case at any stage of the administrative proceeding; petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the Administrative Review Board proceeding. We anticipate that ordinarily the Assistant Secretary will not participate in Pipeline Safety Act proceedings, except to approve settlements as described in 29 CFR 1981.111(d). However, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Department of Transportation, at that agency's discretion, also may participate as *amicus curiae* at any time in the proceedings. OSHA believes it is unlikely that its decision ordinarily not to prosecute meritorious Pipeline Safety Act cases will discourage employees from making complaints about pipeline safety.

The Department seeks comment regarding whether the protection of the public interest in protecting pipeline safety whistleblowers against retaliation by their employers requires the Assistant Secretary to participate in Pipeline Safety Act proceedings routinely or only in appropriate cases. The Department will consider these comments, as well as its experience under this program in the interim, in issuance of the final rule.

Section 1981.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's

determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1981.104 is not subject to review by the ALJ, who hears the case *de novo* on the merits.

Section 1981.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary unless a timely petition for review is filed with the Administrative Review Board. Appeals to the Board are not a matter of right, but rather petitions for review are accepted at the discretion of the Board. Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the Board for review of that decision. The parties must specifically identify the findings and conclusions to which they take exception, or the exceptions are deemed waived by the parties. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If the Board grants the petition, the Act requires the Board to issue a decision not later than 90 days after the date of the conclusion of the hearing before the ALJ. The conclusion of the hearing for this purpose is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provisions of STAA and AIR21. *See* 29 CFR 1978.109(b)(3) and 1979.110(b).

Section 1981.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings.

It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1981.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1981.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1981.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

IV. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1981.103) which was previously reviewed and approved for use by the Office of Management and Budget ("OMB") under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required for these regulations, which provide procedures for the handling of discrimination complaints. Although this rule is not subject to the notice and comment procedures of the APA, persons interested in this interim final rule may submit comments within 60 days. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because the Pipeline Safety whistleblower provision is a new program and because of the importance to the Department of Transportation's pipeline safety program that "whistleblowers" be protected from retaliation. Executive Order 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in Section 3(f)(1) as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of the Pipeline Safety Act, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1981

Administrative practice and procedure, Employment, Investigations, Pipelines, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation, Whistleblowing.

Signed at Washington, DC this 29th day of March, 2004.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, part 1981 of title 29 of the Code of Federal Regulations is promulgated as follows:

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

Sec.

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 49 U.S.C. 60129; Secretary of Labor's Order 5–2002, 67 FR 65008 (October 22, 2002).

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1981.100 Purpose and scope.

(a) This part implements procedures under section 6 of the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129 ("the Pipeline Safety Act"), which provides for employee protection from discrimination by a person owning or operating a pipeline facility or a contractor or subcontractor of such person because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other provision of Federal law relating to pipeline safety.

(b) This part establishes procedures pursuant to the Pipeline Safety Act for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under the Pipeline Safety Act, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1981.101 Definitions.

"Act" or "Pipeline Safety Act" means section 6 of the Pipeline Safety Improvement Act of 2002, Public Law No. 107–355, December 17, 2002, 49 U.S.C. 60129.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

"Complainant" means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

"Employee" means an individual presently or formerly working for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, an individual applying to work for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, or an individual whose employment could be affected by a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

"Employer" means a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

"Gas pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

"Hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

"Named person" means the person alleged to have violated the Act.

"OSHA" means the Occupational Safety and Health Administration of the United States Department of Labor.

"Person" means a corporation, company, association, firm, partnership, joint stock company, an individual, a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.

"Pipeline facility" means a gas pipeline facility and a hazardous liquid pipeline facility.

"Secretary" means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1981.102 Obligations and prohibited acts.

(a) No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (5) of this section.

(b) It is a violation of the Act for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety;

(2) Refused to engage in any practice made unlawful by chapter 601, in subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(3) Provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or testimony in any proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter

601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety;

(4) Commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety; or

(5) Assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety.

(c) This part shall have no application to any employee of an employer who, acting without direction from the employer (or such employer's agent), deliberately causes a violation of any requirement relating to pipeline safety under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law.

§ 1981.103 Filing of discrimination complaint.

(a) Who may file. An employee who believes that he or she has been discriminated against by an employer in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) Nature of filing. No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) Place of filing. The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) Time for filing. Within 180 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

(e) Relationship to section 11(c) complaints. A complaint filed under the Pipeline Safety Act that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of the Pipeline Safety Act will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Normal procedures and timeliness requirements for investigations under the respective laws and regulations will be followed.

§ 1981.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section and paragraph (e) of § 1981.110. A copy of the notice to the named person will also be provided to the Department of Transportation.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint shall not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same 20 days, the named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1981.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This

evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1981.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order will be effective 60 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1981.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 60 days of receipt of the findings and preliminary order pursuant to paragraph (b) of § 1981.105. The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001 and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order. The named person may file a motion with the Office of Administrative Law Judges for stay of the Assistant Secretary's preliminary order.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1981.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo*, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1981.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as *amicus curiae* at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the named person.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Secretary of Transportation may participate as *amicus curiae* at any time in the proceedings, at the Secretary of Transportation's discretion. At the request of the Secretary of Transportation, copies of all pleadings in a case must be sent to the Secretary of Transportation, whether or not the Secretary of Transportation is participating in the proceeding.

§ 1981.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1981.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorney and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and will not be stayed by the filing of a timely petition for review with the Administrative Review Board. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board, unless the Board grants a motion to stay the order. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may

award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1981.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 60-day objection period described in § 1981.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 60-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) Investigative settlements. At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) Adjudicatory settlements. At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute the final order of the Secretary and may be enforced pursuant to § 1981.113.

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under § 1981.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1981.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1981.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

[FR Doc. 04–7612 Filed 4–2–04; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–018]

RIN 1625–AA09

Drawbridge Operation Regulations; Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx; the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx; and the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens. This temporary final rule authorizes the bridge owner to close the above bridges on May 2, 2004, at different times of short duration to facilitate the running of the Five Borough Bike Tour. Vessels that can pass under the bridges without a bridge opening may do so at any time.

DATES: This rule is effective on May 2, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**.

The Coast Guard believes this action is reasonable because the city only recently made the request to keep these bridges closed and the requested closures are of short duration on a Sunday when the bridges normally have no requests to open.

The Harlem River and the Newtown Creek are navigated predominantly by commercial vessels that pass under the bridges without bridge openings. The few commercial vessels that do require openings are work barges that do not operate on Sundays.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of the race participants.

Background and Purpose

Third Avenue Bridge

The Third Avenue Bridge, at mile 1.9, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing operating regulations are listed at § 117.789(c).

Madison Avenue Bridge

The Madison Avenue Bridge, at mile 2.3, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position. The existing operating regulations are listed at § 117.789(c).

Pulaski Bridge

The Pulaski Bridge, at mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations are listed at § 117.801(g).

The owner of the bridges, New York City Department of Transportation, requested a change to the operating regulations for the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to facilitate the running of the Five Borough Bike Tour on Sunday, May 2, 2004.

Under this temporary final rule the Third Avenue Bridge, at mile 1.9, and the Madison Avenue Bridge, at mile 2.3, may remain in the closed position from 8 a.m. to 12 p.m. on Sunday, May 2, 2004. The Pulaski Bridge, at mile 0.6, across Newtown Creek, may remain in the closed position from 9:30 a.m. to 11:30 a.m. on Sunday, May 2, 2004. Vessels that can pass under the bridges without a bridge opening may do so at all times.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the requested closures are of short duration on a Sunday morning when the bridges normally do not receive any requests to open.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that requested closures are of short duration on a Sunday morning when the bridges normally do not receive any requests to open.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the instruction, from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.789, from 8 a.m. through 12 p.m. on May 2, 2004, paragraph (c) is temporarily suspended and a new temporary paragraph (g) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(g) The draws of the bridges at 103 Street, mile 0.0, Willis Avenue, mile 1.5, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the two Broadway Bridges, mile 6.8, shall open on signal from 10 a.m. to 5 p.m. if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for vessel traffic from 8 a.m. to 12 p.m. on Sunday, May 2, 2004.

■ 3. In section 117.801, from 9:30 a.m. through 11:30 a.m. on May 2, 2004, paragraph (g) is suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the Greenpoint Avenue Bridge, mile 1.3, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation Radio (Hotline) Room. The Pulaski Bridge, mile 0.6, need not open for vessel traffic from 9:30 a.m. to 11:30 a.m. on May 2, 2004.

Dated: March 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–7624 Filed 4–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–022]

Drawbridge Operation Regulations: Piscataqua River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Memorial (US1) Bridge, mile 3.5, across the Piscataqua River between Portsmouth, New Hampshire and Kittery, Maine. Under this temporary deviation, bridge openings for recreational vessels and commercial vessels less than 100 gross tons, will be scheduled at specific times from April 5, 2004 through May 21, 2004. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from April 5, 2004 through May 21, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Memorial (US1) Bridge has a vertical clearance in the closed position of 19 feet at mean high water and 27 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR § 117.531(b).

The bridge owner, New Hampshire Department of transportation (NHDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary structural maintenance at the bridge.

The bridge must remain in the closed position to allow the construction equipment and personnel to repair the moveable lift span and lift towers. The bridge will open for recreational vessels and commercial vessels less than 100 gross tons from 6 a.m. to 5 p.m., Monday through Friday, at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 5 p.m., respectively. From 5 p.m. through 6 a.m. and on weekends, the draw shall open on signal.

Bridge openings will continue to be provided as soon as possible at all times for commercial vessels greater than 100 gross tons, inbound fishing vessels, and inbound ferry service vessels.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are vital necessary repairs that must be performed with undue delay in order to assure the continued safe reliable operation of the bridge.

Under this temporary deviation the Memorial (US1) Bridge shall open on signal; except that, from April 5, 2004 through May 21, 2004, Monday through Friday, the draw shall open for recreational vessels and commercial vessels less than 100 gross tons at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 5 p.m., respectively. Commercial vessels greater than 100 gross tons, inbound fishing vessels, and inbound ferry service vessels shall be passed as soon as possible at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35(b), and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–7622 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7634]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to

request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arkansas: Pulaski (Case No. 03–06–1726P).	City of Little Rock	Jan. 28, 2004, Feb. 4, 2004, *Arkansas Democrat Gazette.*	The Honorable Jim Dailey Mayor, City of Little Rock, Little Rock City Hall, Room 203, 500 West Markham, Little Rock, AR 72201.	January 7, 2004	050181
Illinois:					
Kane & Cook (Case No. 03–05–3985P).	City of Elgin	Jan. 14, 2004, Jan. 21, 2004, *The Daily Herald.*	The Honorable Ed Schock, Mayor, City of Elgin, 150 Dexter Court, Elgin, IL 60120.	December 15, 2003 ..	170087
Kane (Case No. 03–05–3985P).	Unincorporated Areas.	Jan. 14, 2004, Jan. 21, 2004, *The Daily Herald.*	Mr. Michael W. McCoy, Chairman, Kane County, Kane County Government Center, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	December 15, 2003 ..	170896
Will (Case No. 03–05–3973P).	Village of Plainfield.	Jan. 21, 2004, Jan. 28, 2004, *The Enterprise.*	The Honorable Richard Rock, Mayor, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	January 5, 2004, ...	170771
Randolph (Case No. 03–05–4001P).	Village of Prairie du Rocher.	Feb. 5, 2004, Feb. 12, 2004, *North County News.*	Mr. Larry Durbin, President, Village of Prairie du Rocher, P.O. Box 325, Prairie du Rocher, IL 62277.	May 13, 2004	170578
Randolph (Case No. 03–05–4001P).	Unincorporated Areas.	Feb. 5, 2004, Feb. 12, 2004, *The County Journal.*	Mr. Terry Moore, Randolph County Commissioner, #1 Taylor Street, Chester, IL 62233.	May 13, 2004	170575

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
McHenry (Case No. 03–05–1458P).	Village of Spring Grove.	Jan. 8, 2004, Jan. 15, 2004, *The Northwest Herald.*	Mr. Robert Martens, Village President, Village of Spring Grove, 7401 Meyer Road, Spring Gove, IL 60081.	December 11, 2003 ..	170485
Will (Case No. 03–05–3973P).	Unincorporated Areas.	Jan. 21, 2004, Jan. 28, 2004, *The Enterprise.*	Mr. Joseph Mikan, Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	January 5, 2004	170695
Will (Case No. 03–05–2577P).	Unincorporated Areas.	Feb. 18, 2004, Feb. 25, 2004, *The Herald News.*	Mr. Joseph Mikan, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	May 26, 2004	170695
Michigan:					
Oakland (Case No. 03–05–5165P).	City of Novi	Feb. 19, 2004, Feb. 26, 2004, *The Novi News.*	The Honorable Lou Csordas, Mayor, City of Novi, 45175 West 10 Mile Road, Novi, MI 48375.	February 5, 2004	260175
Washtenaw (Case No. 03–05–2560P).	Charter Township of Pittsfield.	Jan. 2, 2004, Jan. 9, 2004, *The Ann Arbor News.*	Mr. James R. Walter, Township Supervisor, Pittsfield Township Admin. Building, 6201 West Michigan Avenue, Ann Arbor, MI 48108.	April 9, 2004	260623
Missouri:					
Lincoln (Case No. 03–07–102P).	City of Troy	Feb. 11, 2004, Feb. 18, 2004, *Troy Free Press.*	The Honorable Charles H. Kember, Jr., Mayor, City of Troy, P.O. Box 86, Troy, MO 63379.	May 19, 2004	290641
Ste. Genevieve (Case No. 03–07–1278P).	City of Ste. Genevieve.	Feb. 4, 2004, Feb. 11, 2004, *Ste. Genevieve Herald.*	The Honorable Richard Greminger, Mayor, City of Ste. Genevieve, 165 South 4th Street, Ste. Genevieve, MO 63670.	May 12, 2004	290325
Ste. Genevieve (Case No. 03–07–1278P).	Unincorporated Areas.	Feb. 4, 2004, Feb. 11, 2004, *Ste. Genevieve Herald.*	Mr. Albert Fults, Presiding Commissioner, Ste. Genevieve County, 55 South 3rd Street, Ste. Genevieve, MO 63670.	May 12, 2004	290833
New Mexico:					
Bernalillo (Case No. 03–06–2543P).	City of Albuquerque.	Jan. 13, 2004, Jan. 20, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	December 16, 2003 ..	350002
Bernalillo (Case No. 03–06–1727P).	City of Albuquerque.	Jan. 14, 2004, Jan. 21, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	April 21, 2004	350002
Bernalillo (Case No. 03–06–2542P).	City of Albuquerque.	Feb. 6, 2004, Feb. 13, 2004, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Jan. 27, 2004	350002
Bernalillo (Case No. 03–06–2542P).	Unincorporated Areas.	Feb. 6, 2003, Feb. 13, 2003, *Albuquerque Journal.*	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW, Albuquerque, NM 87102.	Jan. 27, 2004	350001
Oklahoma:					
Cleveland (Case No. 02–06–1713P).	City of Norman ...	Jan. 7, 2004, Jan. 14, 2004, *The Norman Transcript.*	The Honorable Ron Henderson, Mayor, City of Norman, 2143 Jackson Drive, Norman, OK 73071.	April 14, 2004	400046
Oklahoma (Case No. 04–06–140P).	City of Oklahoma City.	Jan. 15, 2004, Jan. 22, 2004, *The Daily Oklahoman.*	The Honorable Guy Liebmann, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	December 30, 2003 ..	405378
Texas:					
Tarrant (Case No. 04–06–383P).	City of Bedford ...	Jan. 29, 2004, Feb. 5, 2004, *The Star Telegram.*	The Honorable R.D. Hurt, Mayor, City of Bedford, 2000 Forest Ridge Drive, Bedford, TX 76021.	May 6, 2004	480585
Dallas (Case No. 03–06–699P).	City of Carrollton	Jan. 14, 2004, Jan. 21, 2004, *The Carrollton Leader.*	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	April 21, 2004	480167

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Collin (Case No. 03–06–677P).	Unincorporated Areas.	Feb. 11, 2004, Feb. 18, 2004, *Plano Star Courier.*	The Honorable Ron Harris, Collin County Judge, 210 S. McDonald Street, Suite 626, McKinney, TX 75069.	May 19, 2004	480130
Hidalgo (Case No. 03–06–1004P).	City of Edinburg	Jan. 9, 2004, Jan. 16, 2004, *Edinburg Daily Review.*	The Honorable Richard H. Garcia, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, TX 78540–1079.	December 16, 2003 ..	480338
Dallas (Case No. 03–06–192P).	City of Grand Prairie.	Jan. 22, 2004, Jan. 29, 2004, *Grand Prairie Morning News.*	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, TX 75050.	January 12, 2004	485472
Collin (Case No. 03–06–2322P).	City of McKinney	Feb. 11, 2004, Feb. 18, 2004, *McKinney Courier-Gazette.*	The Honorable Bill Whitfield, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	May 19, 2004	480135
Dallas (Case No. 03–06–700P).	City of Mesquite	Jan. 7, 2004, Jan. 14, 2004, *The Mesquite News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	April 14, 2004	485490
Dallas (Case No. 03–06–1529P).	City of Mesquite	Feb. 5, 2004, Feb. 12, 2004, *Mesquite Morning News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	January 21, 2004	485490
Dallas (Case No. 03–06–1221P).	City of Mesquite	Feb. 19, 2004, Feb. 26, 2004, *The Mesquite News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	January 29, 2004	485490
Midland (Case No. 03–06–2045P).	City of Midland ...	Jan. 22, 2004, Jan. 29, 2004, *Midland Reporter-Telegram.*	The Honorable Michael J. Canon, Mayor, City of Midland, 300 North Loraine, P.O. Box 1152, Midland, TX 79701.	April 30, 2004	480477
Collin (Case No. 03–06–685P).	City of Plano	Jan. 7, 2004, Jan. 14, 2004, *Plano Star Courier.*	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	December 16, 2003 ..	480140
Bexar (Case No. 03–06–1201P).	City of San Antonio.	Feb. 19, 2004, Feb. 26, 2004, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	May 27, 2004	480045
Bell (Case No. 02–06–2439P).	City of Temple	Jan. 6, 2004, Jan. 13, 2004, *Temple Daily Telegram.*	The Honorable Bill Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	April 13, 2004	480034
Collin (Case No. 03–06–677P).	City of Wylie	Feb. 11, 2004, Feb. 18, 2004, *The Wylie News.*	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	May 19, 2004	480759

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7596 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Arkansas:					
Benton (Case No. 02–06–152P) (FEMA Docket No. P7628).	Unincorporated Areas.	Aug. 29, 2003, Sept. 5, 2003, *Benton County Daily Record.*	The Honorable Gary D. Black, Judge, Benton County, 215 East Central, Bentonville, AR 72712.	December 5, 2003	050419
Lonoke (Case No. 03–06–676P) (FEMA Docket No. P7628).	City of Cabot	Aug. 20, 2003, Aug. 27, 2003, *Cabot Star-Herald.*	The Hon. Mickey D. Stumbaugh, Mayor, City of Cabot, 101 N. Second Street, Cabot, AR 72023.	November 26, 2003 ..	050309
Washington (Case No. 03–06–1948P) (FEMA Docket No. P7630).	City of Fayetteville.	Oct. 7, 2003, Oct. 14, 2003, *Northwest Arkansas Times.*	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	January 13, 2004	050216
Washington (Case No. 02–06–2147P) (FEMA Docket No. P7628).	City of Springdale	Aug. 20, 2003, Aug. 27, 2003, *The Morning News.*	The Honorable Jerre Van Hoose, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	November 26, 2003 ..	050219
Washington (Case No. 03–06–1948P) (FEMA Docket No. P7630).	Unincorporated Areas.	Oct. 7, 2003, Oct. 14, 2003, *Northwest Arkansas Times.*	The Honorable Jerry Hunton, Judge, Washington County, 280 North College Avenue, Suite 500, Fayetteville, AR 72701.	January 13, 2004	050212

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Illinois:					
Will (Case No. 03–05–0430P) (FEMA Docket No. P7628).	Village of Mokena	Aug. 7, 2003, Aug. 14, 2003, *The Lincoln Way Sun.*	The Honorable Robert Chiszar, Mayor, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	November 13, 2003 ..	170705
Will (Case No. 03–05–2575P) (FEMA Docket No. P7628).	Village of Plainfield.	Sept. 10, 2003, Sept. 17, 2003, *The Enterprise.*	The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 W. Lockport Street, Plainfield, IL 60544.	August 20, 2003	170771
Will (Case No. 03–05–0130P) (FEMA Docket No. P7626).	Village of Romeoville.	July 23, 2003, July 30, 2003, *The Herald News.*	The Honorable Fred Dewald, Jr., Mayor, Village of Romeoville, Village Hall, 13 Montrose Drive, Romeoville, IL 60446.	October 29, 2003	170711
Will (Case No. 03–05–0430P) (FEMA Docket No. P7628).	Unincorporated Areas.	Aug. 7, 2003, Aug. 14, 2003, *The Lincoln Way Sun.*	Mr. Joseph Mikan, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	November 13, 2003 ..	170695
Indianapolis: (Case No. 03–05–1461P) (FEMA Docket No. P7628).	Marion City of Indianapolis.	Sept. 22, 2003, Sept. 29, 2003, *The Indianapolis Star.*	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington, Street, Suite 2501, City-County Building, Indianapolis, IN 46204.	December 29, 2003..	180159
Kansas:					
Sedgwick (Case No. 03–07–883P) (FEMA Docket No. P7628).	City of Derby	Sept. 5, 2003, Sept. 12, 2003, *The Daily Reporter.*	The Honorable Dion Avello, Mayor, City of Derby, Derby City Hall, 611 Mulberry Road Derby, KS 67037.	December 12, 2003 ..	200323
Riley (Case No. 03–07–497P) (FEMA Docket No. P7628).	City of Manhattan	Sept. 5, 2003, Sept. 12, 2003, *The Manhattan Mercury.*	The Honorable Mark Taussig, Mayor, City of Manhattan, City Hall 1101 Poyntz Avenue, Manhattan, KS 66502–5497.	December 12, 2003 ..	200300
Johnson (Case No. 02–07–1011P) (FEMA Docket No. P7628).	City of Olathe	Jan. 21, 2003, Jan. 28, 2003, *The Olathe News.*	The Honorable Michael Copeland, Mayor, City of Olathe, 126 South Cherry, Olathe, KS 66061.	April 29, 2003	200173
Sumner (Case No. 02–07–555P) (FEMA Docket No. P7626).	City of Wellington	July 17, 2003, July 24, 2003, *Wellington Daily News.*	The Honorable Richard Granger, Mayor, City of Wellington, 317 South Washington, Wellington, KS 67152.	October 23, 2003	200349
Michigan:					
Ingham, Eaton, & Clinton (Case No. 03–05–1475P) (FEMA Docket No. P7628).	City of Lansing ...	Sept. 5, 2003, Sept. 12, 2003, *Lansing State Journal.*	The Honorable Tony Benavides, Mayor, City of Lansing, 9th Floor, City Hall, 124 W. Michigan Avenue, Lansing, MI 48933.	December 12, 2003 ...	260090

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Jackson (Case No. 02–05–3653P) (FEMA Docket No. P7628).	Township of Summit.	Sept. 23, 2003, Sept. 30, 2003, *Jackson Citizen Patriot.*	Mr. Russ Youngdahl, Supervisor, Township of Summit, 2121 Ferguson Road, Jackson, MI 49203.	Sept. 2, 2003	260575
Cass (Case No. 02–07–670P) (FEMA Docket No. P7626).	City of Harrisonville.	July 11, 2003, July 18, 2003, *Cass County Democrat-Missourian.*	The Honorable Kevin Wood, Mayor, City of Harrisonville, 300 East Pearl Street, Harrisonville, MO 64701.	October 17, 2003	290068
St. Louis (Case No. 03–07–106P) (FEMA Docket No. P7628).	City of Hazelwood.	Sept. 1, 2003, Sept. 8, 2003, *St. Louis Post Dispatch.*	The Honorable T.R. Carr, Mayor, City of Hazelwood, 415 Elm Grove Lane, Hazelwood, MO 63042–1917.	August 19, 2003	290357
New Mexico:					
Bernalillo (Case No. 03–06–1002P) (FEMA Docket No. P7628).	City of Albuquerque.	Aug. 29, 2003, Sept. 5, 2003, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	August 15, 2003	350002
Bernalillo (Case No. 03–06–445P) (FEMA Docket No. P7628).	City of Albuquerque.	Sept. 19, 2003, Sept. 26, 2003, *Albuquerque Journal.*	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	September 8, 2003 ...	350002
Bernalillo (Case No. 02–06–1424P) (FEMA Docket No. P7626).	Unincorporated Areas.	July 16, 2003, July 23, 2003, *Albuquerque Journal.*	Mr. Tom Rutherford, Chairman, Bernalillo County, 2400 Broadway, S.E., Albuquerque, NM 87102.	October 22, 2003	350001
Bernalillo (Case No. 03–06–445P) (FEMA Docket No. P7628).	Unincorporated Areas.	September 19, 2003, September 26, 2003, *Albuquerque Journal.*	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza N.W., Albuquerque, NM 87102.	September 8, 2003 ...	350001
Dona Ana (Case No. 03–06–1210P) (FEMA Docket No. P7628).	City of Las Cruces.	September 1, 2003, September 8, 2003, *Las Cruces Sun News.*	The Hon. William M. Mattiace, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004.	August 15, 2003	355332
Ohio:					
Lorain (Case No. 03–05–0530P) (FEMA Docket No. P7628).	City of Avon	September 24, 2003, October 1, 2003, *The Morning Journal.*	The Honorable James Smith, Mayor, City of Avon, 36080 Chester Road, Avon, OH 44011–1588.	September 15, 2003	390348
Lorain (Case No. 02–05–3235P) (FEMA Docket No. P7630).	City of Avon Lake	October 9, 2003, October 16, 2003, *The Sun.*	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road, Avon Lake, OH 44012.	September 24, 2003 ..	390602

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Butler (Case No. 03–05–1848P) (FEMA Docket No. P7626).	Unincorporated Areas.	July 21, 2003, July 28, 2003, *The Journal-News.*	Mr. Michael A. Fox, President, Butler County Commissioners, Government Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011.	October 27, 2003	390037
Oklahoma:					
Comanche (Case No. 03–06–076P) (FEMA Docket No. P7628).	City of Lawton	Aug. 1, 2003, Aug. 8, 2003, *The Lawton Constitution.*	The Honorable Cecil E. Powell, Mayor, City of Lawton, 103 Southwest 4th Street, Lawton, OK 73501.	July 18, 2003	400049
Cleveland (Case No. 03–06–187P) (FEMA Docket No. P7626).	City of Norman ...	July 31, 2003, Aug. 7, 2003, *The Norman Transcript.*	The Honorable Ron Henderson, Mayor, City of Norman, 2143 Jackson Drive, Norman, OK 73071.	November 6, 2003	400046
Oklahoma (Case No. 03–06–1389P) (FEMA Docket No. P7628).	City of Oklahoma City.	Aug. 20, 2003, Aug. 27, 2003, *The Daily Oklahoman.*	The Honorable Guy Liebmann, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	August 1, 2003	405378
Tulsa (Case No. 03–06–1939P) (FEMA Docket No. P7628).	City of Tulsa	Sept. 23, 2003, Sept. 30, 2003, *Tulsa World.*	The Honorable Bill LaFortune, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	December 30, 2003 ...	405381
Texas:					
Taylor and Jones (Case No. 03–06–198P) (FEMA Docket No. P7628).	City of Abilene	Aug. 18, 2003, Aug. 25, 2003, *The Abilene Reporter-News.*	The Honorable Grady Barr, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	November 24, 2003 ..	485450
Tarrant (Case No. 03–06–1010P) (FEMA Docket No. P7628).	City of Arlington ..	Aug. 13, 2003, Aug. 20, 2003, *Northeast Tarrant County Morning News.*	The Honorable Robert Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004.	July 22, 2003	485454
Jefferson (Case No. 02–06–2312P) (FEMA Docket No. P7628).	City of Beaumont	Aug. 13, 2003, Aug. 20, 2003, *Beaumont Enterprise.*	The Honorable Evelyn Lord, Mayor, City of Beaumont, P.O. Box 3827, Beaumont, TX 77704.	November 19, 2003 ..	485457
Williamson (Case No. 02–06–1089P) (FEMA Docket No. P7626).	City of Cedar Park.	July 11, 2003, July 18, 2003, *The Hill Country News.*	The Honorable Bob Young, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	October 17, 2003	481282
Brazos (Case No. 03–06–102P) (FEMA Docket No. P7626).	City of College Station.	July 24, 2003, July 31, 2003, *The Eagle.*	The Honorable Ron Silvia, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842.	October 30, 2003	480083

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Fort Bend (Case No. 02–06–2301P) (FEMA Docket No. P7626).	Unincorporated Areas.	July 23, 2003, July 30, 2003, *Fort Bend Star.*	The Hon. James C. Adolphus, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469.	October 29, 2003	480228
Tarrant (Case No. 02–06–2303P) (FEMA Docket No. P7626).	City of Fort Worth	July 21, 2003, July 28, 2003, *The Star Telegram.*	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	July 8, 2003	480596
Tarrant (Case No. 03–06–1202P) (FEMA Docket No. P7628).	City of Fort Worth	Aug. 29, 2003, September 5, 2003, *The Star Telegram.*	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	December 5, 2003	480596
Tarrant (Case No. 03–06–1203P) (FEMA Docket No. P7628).	City of Fort Worth	Aug. 13, 2003, Aug. 20, 2003, *The Star Telegram.*	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	November 19, 2003 ..	480596
Tarrant (Case No. 03–06–276P) (FEMA Docket No. P7628).	City of Fort Worth	Aug. 22, 2003, Aug. 29, 2003, *The Star Telegram.*	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	November 28, 2003 ...	480596
Tarrant (Case No. 03–06–1214P) (FEMA Docket No. P7628).	City of Hurst	July 25, 2003, Aug. 1, 2003, *The Star Telegram.*	The Honorable William Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054–3302.	October 31, 2003	480601
Kaufman (Case No. 03–06–1932P) (FEMA Docket No. P7628).	Unincorporated Areas.	Sept. 9, 2003, Sept. 16, 2003, *The Terrell Tribune.*	The Honorable Wayne Gent, Judge, Kaufman County, 100 West Mulberry Street, Kaufman, TX 75142.	December 16, 2003 ..	480411
Hays (Case No. 03–06–1537P) (FEMA Docket No. P7628).	City of Kyle	Sept. 3, 2003, Sept. 10, 2003, *The Kyle Eagle.*	The Honorable James Adkins, Mayor, City of Kyle, 102 Briarwood Circle, Kyle, TX 78640.	August 18, 2003	481108
Dallas (Case No. 03–06–1543P) (FEMA Docket No. P7628).	City of Mesquite	Aug. 28, 2003, Sept. 4, 2003, *Mesquite Morning News.*	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Dec. 4, 2003	485490
Fort Bend (Case No. 02–06–2301P) (FEMA Docket No. P7626).	City of Rosenberg.	July 23, 2003, July 30, 2003, *The Herald Coaster.*	The Honorable Joe Gurecky, Mayor, City of Rosenberg P.O. Box 32, Rosenberg, TX 77471–0032.	October 29, 2003	480232

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Bexar (Case No. 02–06–1947P) (FEMA Docket No. P7628).	City of San Antonio.	Jan. 24, 2003, Jan. 31, 2003, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	May 2, 2003	480045
Bexar (Case No. 03–06–683P) (FEMA Docket No. P7628).	City of San Antonio.	July 24, 2003, July 31, 2003, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	July 14, 2003	480045
Kaufman (Case No. 03–06–1932) (FEMA Docket No. P7628).	City of Terrell	Sept. 9, 2003, Sept. 16, 2003, *The Terrell Tribune.*	The Hon. Frances Anderson, Mayor, City of Terrell, 201 East Nash Street, Terell, TX 75160.	December 16, 2003 ...	480416
Wisconsin: Washington (Case No. 03–05–1465P) (FEMA Docket No. P7628).	Village of Germantown.	Aug. 20, 2003, Aug. 27, 2003, *Banner-Germantown Press.*	Mr. Charles J. Hargan, President, Village of Germantown, P.O. Box 337 Germantown, WI 53022.	August 11, 2003	550472

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7597 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive

Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Mile Branch:		
Approximately 1,320 feet downstream of the Burlington Northern & Santa Fe Railway	*993	FEMA Docket No. P7631 City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,050 feet upstream of 103rd Road	*1,075	
Mile Branch Tributary No. 2:		
Approximately 775 feet downstream of West Parkview	*1,005	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,520 feet upstream of West Parkview	*1,046	
Mile Branch Tributary No. 3:		
At confluence with Mile Branch	*1,012	City of Bolivar.
At Limit of Detailed Study	*1,056	
Mile Branch Tributary No. 4:		
At confluence with Mile Branch	*1,024	
At Limit of Detailed Study	*1,060	
Mile Branch Tributary No. 6:		
At confluence with Mile Branch	*1,046	
At Limit of Detailed Study	*1,064	
Mile Branch Tributary No. 7:		
At confluence with Mile Branch	*1,068	
At Limit of Detailed Study	*1,078	
Southern Tributary to Town Branch:		
Approximately 2,440 feet downstream of Buffalo Street	*996	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 600 feet upstream of Circle Drive	*1,052	
Southern Tributary to Town Branch-Tributary No. 1:		
At confluence with Southern Tributary to Town Branch	*1,036	City of Bolivar.
At Limit of Detailed Study	*1,061	
Town Branch:		
Approximately 1,750 feet downstream of Broadway Street (State Highway 32)	*980	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,500 feet upstream of Lakewood Drive	*1,081	
Town Branch Tributary No. 1:		
Approximately 150 feet downstream of East Walnut Street	*1,027	City of Bolivar.
Approximately 50 feet upstream of Buffalo Street	*1,049	
Town Branch Tributary No. 2:		
Approximately 135 feet downstream from Jefferson Street	*1,033	
At Burlington Northern & Santa Fe Railway	*1,055	
Town Branch Tributary No. 3:		
At confluence with Town Branch	*1,070	
At Limit of Detailed Study	*1,081	

ADDRESSES

Polk County (Unincorporated Areas):

Maps are available for inspection at 102 East Broadway Street, Room 11, Bolivar, Missouri.

City of Bolivar:

Maps are available for inspection at City Hall, 345 South Main Street, Bolivar, Missouri.

Hutchins Creek:		
Just downstream of Langdon Drive	*399	FEMA Docket No. P7641 Dallas County, Texas (Unincorporated Areas).
Approximately 915 feet upstream of North JJ Lemmon Street	*484	City of Hutchins, Texas.
Rawlins Creek:		
Approximately 100 feet downstream of the confluence of Stream 4B4	*396	Dallas County, Texas (Unincorporated Areas).
Approximately 2,350 feet upstream of South Miller Ferry Road	*490	City of Hutchins, Texas.
Stream 4B4:		

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Approximately 500 feet upstream of the confluence with Rawlins Creek	*396	Dallas County, Texas (Unincorporated Areas).
Approximately 425 feet upstream of North Denton Street	*469	City of Hutchins, Texas.

ADDRESSES

City of Hutchins, Dallas County, Texas:
Maps are available for inspection at Gross and Associates Real Estate, 206 North Pacific Street, Hutchins, Texas.
Unincorporated Areas of Dallas County, Texas:
Maps are available for inspection at the County Records Building, 509 Main Street, Dallas, Texas.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7598 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of " § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
IA	Ames (City) Story County (FEMA Docket No. P7633).	College Creek	Approximately 1,400 feet downstream of South Dakota Avenue.	*976
			Approximately 600 feet upstream of Wilder Boulevard.	*1,016
IA	Ames (City) Story County (FEMA Docket No. P7633).	Skunk River	Approximately 200 feet downstream of Ken Maril Road.	*874
			Approximately 3 miles upstream of East 13th Street.	*904
		Squaw Creek	Approximately 2,000 feet downstream of S. Duff Avenue.	*885
			Approximately 2,600 feet upstream of confluence with Onion Creek.	*911
Maps are available for inspection at the Department of Planning and Housing, City Hall, Room 214, 515 Clark Avenue, Ames, Iowa.				
TX	Ingleside (City) San Patricio County (FEMA Docket No. P7639).	McCampbell Slough	Approximately 0.6 mile downstream of FM 3512.	*9
			Approximately 580 feet upstream of State Highway 361 (Highland Street).	*13
Maps are available for inspection at Ingleside City Hall, 2671 San Angelo Drive, Ingleside, Texas.				
TX	San Patricio County (Unincorporated Areas) (FEMA Docket No. P7639).	McCampbell Slough	Appoximately 230 feet downstream of State Highway 35 (Wheeler Avenue).	*8
			Approximately 1.2 miles upstream of FM 3512.	*11
Maps are available for inspection at the San Patricio County Health Department, Environmental Division, 313 North Rachal Avenue, Sinton, Texas.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7599 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 69, No. 65
Monday, April 5, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD); applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes; that currently requires repetitive inspections to detect discrepancies of the transfer tubes and the collar of the ball nut of the trimmable horizontal stabilizer actuator (THSA); and corrective action, if necessary. This action would expand the applicability of the existing AD; and would require new repetitive inspections for discrepancies of the ball screw assembly; corrective action if necessary; repetitive greasing of the THSA ball nut, and replacement of the THSA if necessary; and a modification or replacement (as applicable) of the ball nut assembly. Such modification or replacement (as applicable) terminates certain repetitive inspections. The actions specified by the proposed AD are intended to prevent degraded operation of the THSA due to the entrance of water into the ball nut. Degraded operation could lead to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–243–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–243–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 25, 2001, the FAA issued AD 2001–11–09, amendment 39–12252 (66 FR 31143, June 11, 2001), applicable to certain Airbus Model A330 and A340 series airplanes. That AD requires repetitive inspections to detect discrepancies of the transfer tubes and the collar of the ball nut of the trimmable horizontal stabilizer actuator (THSA); and corrective action, if necessary. That action was prompted by several reports of disconnection of the transfer tube from the ball nut of the THSA. The requirements of that AD are intended to prevent degraded operation of the THSA due to the entrance of water into the ball nut. Degraded operation could lead to reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised us of additional incidents in which transfer tubes disconnected from the ball nut of the THSA. In response to these initial incidents, Airbus has revised the A330/A340 Airplane Maintenance Manual (AMM) to enhance existing maintenance instructions for repetitive greasing of the

THSA, and has developed procedures for new repetitive inspections for discrepancies of the ball screw assembly.

Also, the preamble to AD 2001–11–09 explains that we considered the requirements of that AD "interim action" and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued the following Service Bulletins (SBs):

- A330–27–3088 (for Model A330 series airplanes) and A340–27–4093 (for Model A340–200 and –300 series airplanes), both Revision 04, both including Appendix 01, and both dated September 5, 2002. These SBs describe procedures for repetitive detailed visual inspections of the transfer tubes and collar on the THSA ball nut to detect discrepancies, including ball migration, distortion, or evidence of disconnection of the THSA ball nut. If any discrepancy is found, the SBs specify to replace the THSA with a new or serviceable part. (These inspections are similar to those specified in Airbus All Operators Telexes (AOT) A330–27A3088 and A340–27A4093, both dated April 5, 2001, which the existing AD refers to as the appropriate source of service information for accomplishment of the actions required by that AD.)
- A330–27–3102, Revision 03, including Appendix 01 (for Model A330 series airplanes); and A340–27–4107, Revision 04, including Appendix 01 (for Model A340–200 and –300 series airplanes); both dated June 20, 2003. These SBs describe procedures for repetitive detailed visual inspections of the ball screw assembly for discrepancies, including cracks, metallic debris, dents, corrosion, loose nuts, and damaged or missing lock washers and pins. These SBs also describe procedures for an inspection of the gap between the secondary nut tenons and the transfer plates using a feeler gage to ensure free movement.
- A330–27–3085 (for Model A330 series airplanes) and A340–27–4089 (for Model A340–313 series airplanes), both Revision 02, both dated September 5, 2002. These SBs describe procedures for modifying the ball nut assembly by installing new steel balls, seals, and a strengthened collar and transfer tubes, to minimize ball migration. These SBs also describe procedures for an alternative procedure to replace the existing ball nut assembly with an improved THSA. These SBs refer to TRW Aeronautical Systems SB 47172–27–03 for additional instructions for accomplishing the modification.
- A330–27–3093 (for Model A330 series airplanes) and A340–27–4099 (for Model A340–200 and –300 series airplanes), both Revision 01, both dated September 5, 2002. These SBs describe procedures for modifying the ball nut assembly on the THSA, or, for certain airplanes, replacing the THSA with an improved THSA. These SBs refer to TRW Aeronautical Systems SB 47172–27–10 for additional instructions for accomplishing the modification.

Accomplishment of the actions in A330–27–3085, Revision 02; A330–27–3093, Revision 01; A340–27–4089, Revision 02; or A340–27–4099, Revision 01; as applicable; eliminates the need for the repetitive inspections for discrepancies of the transfer tubes and collar on the THSA ball nut.

The DGAC classified these SBs as mandatory and issued French airworthiness directives 2002–414(B) R2 and 2002–415(B) R2, both dated October 30, 2002, to ensure the continued airworthiness of these airplanes in France.

Explanation of Previous/Concurrent Service Information

Airbus also has issued SBs A330–27–3052 and A340–27–4059, both Revision 03, both dated December 5, 2001. (Airbus SB A330–27–3093, Revision 01, and Airbus SB A340–27–4099, Revision 01, specify that SBs A330–27–3052 and A340–27–4059, respectively, must be accomplished previously or concurrently.) Those SBs describe procedures for replacing the THSA with a THSA modified per Lucas Aerospace SB 47147–27–07. The Lucas SB introduces a modified screwjack with ceramic balls and spacer balls, modifies the motor shafts and planet gear assembly, and installs machined seals on the transfer tubes.

Airbus SB A330–27–3052, Revision 03, specifies that the actions in Airbus SBs A330–27–3007, A330–27–3015, A330–27–3047, A330–27–3050, and A330–27–3020 must be accomplished previously or concurrently. The current revisions of those SBs and the actions they describe, as well as additional sources of service information referenced in those SBs, are as follows:

Airbus SB	Revision level	Date	Main action	Additional source of service information
A330–27–3007	01	September 18, 1996	Replace rudder servo controls with modified parts	Samm Avionique SB 5300–27–24–01.
A330–27–3015	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace SB 47147–27–02.
A330–27–3047	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace SB 47147–27–04.
A330–27–3050	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace SB 47147–27–05.
A330–55–3020	01	October 21, 1998	Perform a visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

Airbus SB A340–27–4059, Revision 03, specifies that Airbus SBs A340–27–4007, A340–27–4025, A340–27–4054, A340–27–4057, and A340–55–4021, must be accomplished previously or concurrently. The current revisions of those SBs and the actions they describe, as well as secondary sources of service information referenced in those SBs, are as follows:

Airbus SB	Revision level	Date	Main action	Additional source of service information
A340–27–4007	Original	April 7, 1994	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace SB 47147–27–01.

Airbus SB	Revision level	Date	Main action	Additional source of service information
A340–27–4025	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace SB 47147–27–02.
A340–27–4054	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace SB 47147–27–04.
A340–27–4057	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace SB 47147–27–05.
A340–55–4021	01	October 21, 1998	Perform a visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–11–09 to continue to require repetitive inspections to detect discrepancies of the transfer tubes and the collar of the ball nut of the THSA, and corrective action if necessary. The proposed AD also would require the actions specified in the SBs described previously, except as discussed below. In addition, the proposed AD would require repetitive greasing of the ball nut of all THSAs per a method approved by the FAA or the DGAC. (Airbus A330 AMM, Chapter 12–22–27, dated July 1, 2001; or Airbus A340 AMM, Chapter 12–22–27, dated April 1, 2001; as applicable; is one acceptable method of compliance with this action.) If, during any accomplishment of the greasing procedure, the new grease is expelled from the transfer tube (instead of through the drain hole), the proposed AD would require replacement of the THSA with a new or serviceable THSA, per Airbus Service Bulletin A330–27–3102, Revision 03 (for Model A330 series airplanes); or A340–27–4107, Revision 04; both dated June 20, 2003; as applicable.

Differences Among Proposed AD, French Airworthiness Directive, and Service Bulletins

Although the Accomplishment Instructions of Airbus SBs A330–27–3088, Revision 04; A340–27–4093, Revision 04; A330–27–3102, Revision 03; and A340–27–4107, Revision 04; describe procedures for completing a reporting sheet with inspection results, this proposed AD would not require those actions.

Although Airbus SBs A330–27–3102, Revision 03, and A340–27–4107, Revision 04, specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair the THSA per a method approved by the FAA, or the DGAC (or its delegated agent).

For the modification of the ball nut of each THSA, the French airworthiness directive specifies a compliance time of December 31, 2003, or July 31, 2004, depending on the part number of the THSA. Paragraph (f) of the proposed AD specifies a compliance time of 24 months after the effective date of the AD for this action. In developing an appropriate compliance time for this AD, we considered the DGAC's recommendation, as well as the manufacturer's recommendation, and the degree of urgency associated with the subject unsafe condition. In light of all of these factors, we find that a 24–month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Paragraph (d) of the proposed AD specifies that, if the new grease applied during the greasing procedure is expelled from the transfer tube (instead of through the drain hole), the proposed AD would require replacement of the THSA with a new or serviceable THSA. For this condition, the French airworthiness directive specifies replacement of the THSA, or contacting Airbus, depending on the part number of the THSA. We find that replacement of the THSA with a new or serviceable THSA will be an acceptable corrective action for this condition. As provided by 14 CFR part 39 (67 FR 47997, July 22, 2002), operators may request approval of an alternative method of compliance with this proposed requirement, if necessary, by submitting a request to the office specified in paragraph (j) of this AD.

Explanation of Changes Made To Existing Requirements

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this action.

Also, for clarification, we have also revised the references to "Model A340 series airplanes" in the existing AD to "Model A340–200 and –300 series airplanes" in this action.

Cost Impact

There are approximately 9 Model A330 series airplanes of U.S. registry that would be affected by this proposed AD. Currently, there are no affected Model A340–200 or –300 series airplanes on the U.S. Register. However, if an affected Model A340–200 or –300 series airplane is imported and placed on the U.S. Register in the future, the following costs would also apply to those airplanes.

The inspections (per All Operators Telex (AOT) A330–27A3088 or A340–27A4093, as applicable) that are currently required by AD 2001–11–09 take approximately 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $585, or $65 per airplane, per inspection cycle.

The new inspections (per Airbus SBs A330–27–3088 or A340–27–4093, as applicable) that are proposed in this AD action would take approximately 1 work hour per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $585, or $65 per airplane, per inspection cycle.

The new greasing action that is proposed in this AD action would take approximately 1 work hour per airplane, per maintenance cycle, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be $585, or $65 per airplane, per maintenance cycle.

In addition to the actions stated above, certain airplanes may be subject to additional actions. The following table contains the cost impact estimate for each airplane affected by the SBs listed below, at an average labor rate of $65 per work hour:

For airplanes listed in Airbus SB—	Estimated number of work hours	Estimated parts cost	Estimated cost per airplane
A330–27–3085 or A340–27–4089, both Revision 02	12	No charge	$780
A330–27–3093 or A340–27–4099, both Revision 01	6	No charge	390
A330–27–3052, Revision 03	6	No charge	390
A330–27–3007, Revision 01	1	No charge	65
A330–27–3015	2	No charge	130
A330–27–3047, Revision 01	2	No charge	130
A330–27–3050	2	No charge	130
A330–55–3020, Revision 01	2 (inspection only)	None	130
A340–27–4059, Revision 03	6	No charge	390
A340–27–4007	2	No charge	130
A340–27–4025	2	No charge	130
A340–27–4054, Revision 01	2	No charge	130
A340–27–4057	2	No charge	130
A340–55–4021, Revision 01	2 (inspection only)	None	130

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12252 (66 FR 31143, June 11, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2001–NM–243–AD. Supersedes AD 2001–11–09, Amendment 39–12252.

Applicability: All Model A330, A340–200, and A340–300 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degraded operation of the trimmable horizontal stabilizer actuator (THSA) due to the entrance of water into the ball nut, which could result in reduced controllability of the airplane, accomplish the following:

Requirements of AD 2001–11–09

Repetitive Inspections

(a) For Model A330, A340–200, and A340–300 series airplanes equipped with a THSA part number (P/N) 47172, and on which Airbus Modification 45299 has been performed: Within 150 flight hours from June 26, 2001 (the effective date of AD 2001–11–09, amendment 39–12252), perform a detailed inspection to detect discrepancies in the THSA (including distortion of the transfer tubes, disconnection of the tubes, and distortion of the collar of the ball nut), in accordance with All Operators Telex (AOT) A330–27A3088 (for Model A330 series airplanes) or A340–27A4093 (for Model A340 series airplanes), both dated April 5, 2001, as applicable. If any discrepancy, as defined in paragraph 4–2–2/Rejection Criteria of the applicable AOT, is detected, prior to further flight, replace the THSA with a serviceable one, per the applicable AOT.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) At intervals not to exceed 150 flight hours, repeat the inspection mandated in paragraph (a) of this AD, until paragraph (c) of this AD has been accomplished.

New Requirements of This AD

Repetitive Detailed Inspections of THSA Ball Nut and Corrective Action

(c) For airplanes equipped with a THSA having P/N 47172 or 47147–400: At the applicable compliance time specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, perform a detailed inspection of the transfer tubes and collar on the THSA ball nut to detect discrepancies, including ball migration, distortion, or evidence of disconnection of the THSA ball nut; per Airbus Service Bulletin A330–27–3088 (for Model A330 series airplanes) or A340–27–4093 (for Model A340–200 and –300 series airplanes), both Revision 04, both dated September 5, 2002; as applicable. Repeat this inspection at intervals not to exceed 150 flight hours until paragraph (f) of this AD is accomplished. If any discrepancy is found during any inspection per this paragraph, before further flight, repair the THSA, per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

(1) Except as provided by paragraph (c)(3) of this AD: For airplanes inspected before the effective date of this AD per paragraph (a) of this AD, do the initial inspection within 150 flight hours since the most recent inspection per paragraph (a) or (b) of this AD. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (b) of this AD.

(2) Except as provided by paragraph (c)(3) of this AD: For airplanes not inspected before the effective date of this AD per paragraph (a) of this AD, do the initial inspection within 150 flight hours after the effective date of this AD. Accomplishment of this inspection within the compliance time specified in paragraph (a) of this AD eliminates the need to accomplish the inspection in paragraph (a) of this AD and terminates the repetitive inspections required by paragraph (b) of this AD.

(3) For airplanes on which "PRIM X PITCH FAULT" or "STAB CTL FAULT" message is displayed on the Electronic Centralized Aircraft Monitor (ECAM) associated with the "PITCH TRIM ACTR (1CS)" maintenance message: Do the inspection in paragraph (c) of this AD before further flight after the message is displayed on the ECAM.

Repetitive Greasing Procedure

(d) For airplanes equipped with a THSA having P/N 47172 or 47147–XXX (where "XXX" is any dash number): Within 700 flight hours after accomplishment of the last greasing of the ball nut of the THSA, grease the ball nut of the THSA per a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). Chapter 12–22–27, page block 301, of the Airplane Maintenance Manual is one approved method. Repeat the greasing procedures at intervals not to exceed 700 flight hours. If, during any accomplishment of the greasing procedure, the new grease is expelled from the transfer tube (instead of through the drain hole): Before further flight, replace the THSA with a new or serviceable THSA, per Airbus Service Bulletin A330–27–3102, Revision 03 (for Model A330 series airplanes); or A340–27–4107, Revision 04; both dated June 20, 2003; as applicable.

Repetitive Inspections of the Ball Screw Assembly and Corrective Actions

(e) For airplanes equipped with a THSA having P/N 47172 or 47147–XXX (where "XXX" is any dash number): Within 700 flight hours after the effective date of this AD: Perform a detailed inspection of the ball screw assembly for discrepancies; including cracks, metallic debris, dents, corrosion, loose nuts, and damaged or missing lock washers and pins; and an inspection of the gap between the secondary nut tenons and the transfer plates using a feeler gage to ensure free movement; per Airbus Service Bulletins A330–27–3102, Revision 03 (for Model A330 series airplanes); or A340–27–4107, Revision 04; both dated June 20, 2003; as applicable.

(1) Repeat the inspection at intervals not to exceed 700 flight hours.

(2) If any discrepancy is found that is outside the limits specified in the applicable service bulletin, before further flight, replace the THSA with a new part, per the applicable service bulletin.

Note 2: There is no terminating action at this time for the repetitive actions required by paragraphs (d) and (e) of this AD.

Modification

(f) Within 24 months after the effective date of this AD, modify the ball nut of each THSA by doing paragraph (f)(1) or (f)(2) of this AD, as applicable. Accomplishment of paragraph (f)(1) or (f)(2) of this AD terminates the repetitive inspections required by paragraph (c) of this AD.

(1) For THSAs having P/N 47172: Modify the ball nut of the THSA, or replace the existing THSA with a serviceable part having P/N 47172–300; per Airbus Service Bulletin A330–27–3085 (for Model A330 series airplanes) or A340–27–4089 (for Model A340–313 series airplanes), both Revision 02, both dated September 5, 2002; as applicable.

Note 3: Airbus Service Bulletins A330–27–3085 and A340–27–4089 refer to TRW Aeronautical Systems Service Bulletin 47172–27–03 as the appropriate source of service information for additional instructions for accomplishing the modification of the ball nut of the THSA.

(2) For THSAs having 47147–2XX, 47147–3XX, or P/N 47147–400 (where "XX" represents any dash number): Modify the ball nut of the THSA, or replace the existing THSA with an improved part having P/N 47147–500; as applicable; per Airbus Service Bulletin A330–27–3093 (for Model A330 series airplanes), or A340–27–4099 (for Model A340–200 and –300 series airplanes), both Revision 01, both dated September 5, 2002; as applicable.

Note 4: Airbus Service Bulletins A330–27–3093 and A340–27–4099 refer to TRW Aeronautical Systems Service Bulletin 47172–27–10 as the appropriate source of service information for additional instructions for accomplishing the modification of the ball nut of the THSA.

Previous/Concurrent Requirements

(g) Prior to or concurrently with accomplishment of the requirements of paragraph (f)(2) of this AD, do all of the actions specified in the Accomplishment Instructions of the applicable Airbus service bulletins listed in Table 1 or 2 of this AD, as applicable, in accordance with those service bulletins.

Note 5: Airbus Service Bulletin A330–27–3093, Revision 01, dated September 5, 2002; specifies that the actions in Airbus Service Bulletin A330–27–3052 must be accomplished previously or concurrently. Airbus Service Bulletin A330–27–3052, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A330–27–3007, A330–27–3015, A330–27–3047, A330–27–3050, and A330–27–3020 must be accomplished previously or concurrently.

Note 6: Airbus Service Bulletin A340–27–4099, Revision 01, dated September 5, 2002, specifies that the actions in Airbus Service Bulletin A340–27–4059 must be accomplished previously or concurrently. Airbus Service Bulletin A340–27–4059, Revision 03, dated December 5, 2001, specifies that the actions in Airbus Service Bulletins A340–27–4007, A340–27–4025, A340–27–4054, A340–27–4057, and A340–55–4021, must be accomplished previously or concurrently.

TABLE 1.—PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A330 SERIES AIRPLANES

Airbus service bulletin	Revision level	Date	Main action	Additional source of service information
A330–27–3052 ...	03	December 5, 2001	Replace THSA with a modified THSA	Lucas Aerospace Service Bulletin 47147–27–07.
A330–27–3007 ...	01	September 18, 1996	Replace rudder servo controls with modified parts.	Samm Avionique Service Bulletin 5300–27–24–01.
A330–27–3015 ...	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147–27–02.

TABLE 1.—PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A330 SERIES AIRPLANES—Continued

Airbus service bulletin	Revision level	Date	Main action	Additional source of service information
A330–27–3047 ...	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–04.
A330–27–3050 ...	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147–27–05.
A330–55–3020 ...	01	October 21, 1998	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

TABLE 2.—PREVIOUS/CONCURRENT REQUIREMENTS FOR MODEL A340 SERIES AIRPLANES

Airbus service bullentin	Revision level	Date	Main action	Additional source of service information
A340–27–4059 ...	03	December 5, 2001	Replace THSA with a modified THSA	Lucas Aerospace Service Bulletin 47147–27–07.
A340–27–4007 ...	Original	April 7, 1994	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–01.
A340–27–4025 ...	Original	June 7, 1995	Modify the control valve detent and the jamming protection device on the THSA.	Lucas Aerospace Service Bulletin 47147–27–02.
A340–27–4054 ...	01	November 26, 1997	Replace hydraulic motors on the THSA with new parts.	Lucas Aerospace Service Bulletin 47147–27–04.
A340–27–4057 ...	Original	November 15, 1996	Replace mechanical input shaft for THSA with modified part.	Lucas Aerospace Service Bulletin 47147–27–05.
A340–55–4021 ...	01	October 21, 1998	Perform a general visual inspection of the THSA screw jack fitting assembly for correct installation of a washer; and correctly install washer as applicable.	None.

Note 7: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Actions Accomplished Previously

(h) Actions accomplished before the effective date of this AD per previous revisions of the service information referenced in this AD are acceptable for corresponding actions required by this AD as specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD.

(1) Inspections and corrective actions accomplished per Airbus Service Bulletin A330–27–3088 (for Model A330 series airplanes) or A340–27–4093 (for Model A340–200 and –300 series airplanes), both Revision 03, both including Appendix 01, both dated October 19, 2001; as applicable; are acceptable for compliance with paragraph (c) of this AD.

(2) Inspections and corrective actions accomplished per Airbus Service Bulletin A330–27–3102, Revision 02, including Appendix 01; dated November 7, 2002 (for Model A330 series airplanes); or A340–27–4107, Revision 03, including Appendix 01, dated December 4, 2002; as applicable; are acceptable for compliance with paragraph (e) of this AD.

(3) Modifications accomplished per Airbus Service Bulletin A330–27–3085 (for Model A330 series airplanes) or A340–27–4089 (for Model A340–313 series airplanes), both Revision 01, both dated January 23, 2002; as applicable; are acceptable for compliance with paragraph (f)(1) of this AD.

(4) Modifications accomplished per Airbus Service Bulletin A330–27–3093 (for Model A330 series airplanes), or A340–27–4099 (for Model A340–200 and –300 series airplanes), both dated June 27, 2002; as applicable; are acceptable for compliance with paragraph (f)(2) of this AD.

No Reporting Required

(i) Where Airbus Service Bulletins A330–27–3088, Revision 04, dated September 5, 2002; A340–27–4093, Revision 04, dated September 5, 2002; A330–27–3102, Revision 03, dated June 20, 2003; and A340–27–4107, Revision 04, dated June 20, 2003; describe procedures for completing a reporting sheet with inspection results, this AD does not require that action.

Alternative Methods of Compliance

(j) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 8: The subject of this AD is addressed in French airworthiness directives 2002–414(B) R2 and 2002–415(B) R2, both dated October 30, 2002.

Issued in Renton, Washington, on March 25, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–7290 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Chapter I

[Docket No. 2004N–0115]

Prescription Drug Importation; Public Meeting and Establishment of Docket; Extension of Deadline for Speakers To Submit Requests for Presentations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and establishment of docket; extension of deadline to submit requests for presentations.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 6, 2004, the deadline for speakers to submit requests for presentations and a summary of the presentation at the April 14, 2004, public meeting on prescription drug importation. This public meeting was announced in the

Federal Register of March 18, 2004 (69 FR 12810).

DATES: Written requests for presentations and summaries of the presentations must be submitted by April 6, 2004.

ADDRESSES: Submit a request for presentations and a summary of your presentation to Karen Strambler, Office of Policy, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, e-mail: *Karen.Strambler@fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2004 (69 FR 12810), FDA published a notice of public meeting and establishment of docket announcing that it established a docket to receive information and comments on certain issues related to the importation of prescription drugs. FDA also announced a public meeting to enable interested individuals, organizations, and other stakeholders to present information to the Task Force for consideration in the study on importation mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Speakers were asked to submit requests for presentations along with a short summary of their presentation by close of business on March 30, 2004. FDA is extending that deadline to April 6, 2004.

All other information and requirements of the March 18, 2004, **Federal Register** notice remain the same.

Dated: March 31, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7714 Filed 4–1–04; 11:04 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–021]

RIN 1625–AA09

Drawbridge Operation Regulations; Harlem River, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Triborough (125th Street) Bridge, mile 1.3, across the Harlem River at New York City, New York. This proposed rule would allow the bridge owner to require a forty-eight hour notice for bridge openings from June 1, 2004 through January 31, 2005. This action is necessary to facilitate structural rehabilitation at the bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 5, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–021), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Triborough (125th Street) Bridge has a vertical clearance of 54 feet at mean high water and 59 feet at mean low water in the closed position.

The existing drawbridge operation regulations listed at 33 CFR § 117.789(d) require the bridge to open on signal from 10 a.m. to 5 p.m. after at least a four-hour notice is given.

The owner of the bridge, the Triborough Bridge and Tunnel Authority (TBTA), requested a temporary change to the drawbridge operation regulations to allow the bridge owner to require a forty-eight hour notice for bridge openings from June 1, 2004 through January 31, 2005, to facilitate structural rehabilitation at the bridge.

The owner of the Triborough (125th Street) Bridge has not received any requests to open the bridge for the past three years.

The bridge owner plans to replace the structural steel deck system at the bridge between June 1, 2004 and January 31, 2005. Temporary concrete roadway barriers will be used to redirect vehicular traffic over the bridge to facilitate lane closures required to structurally rehabilitate sections of the bridge roadway steel decking.

Under the existing drawbridge operation regulations, which require a four-hour advance notice, unscheduled bridge opening requests would be impossible to grant because the time necessary to safely remove construction equipment, concrete barriers, and construction workers from the lift span would be considerably longer than four hours.

The Coast Guard believes the requested forty-eight hour advance notice requirement is reasonable based upon the lack of bridge opening requests over the past three years and the fact that the bridge will continue to open on signal provided a forty-eight hour notice is given.

It is expected that this rule, by requiring a forty-eight hour notice for bridge openings, will provide adequate notification to the contractor to facilitate the safe removal of equipment and personnel from the bridge in order to provide any requested bridge openings.

A shortened comment period of 30 days is necessary to allow this rule to become effective in time for the start of the necessary construction at the bridge on June 1, 2004.

The Coast Guard believes this shortened comment period is reasonable because the bridge repairs are necessary repairs that must be performed without delay in order to assure the continued

safe reliable operation of the bridge and prevent an unscheduled closure due to component failure.

Discussion of Proposal

This proposed change would amend 33 CFR 117.789 by suspending paragraph (d) and adding a new temporary paragraph (h) from June 1, 2004 through January 31, 2005.

Under this proposed rule the Triborough (125th Street) Bridge would open on signal from 10 a.m. to 5 p.m. if at least a forty-eight hour notice is given.

A forty-eight hour advance notice for bridge openings would allow sufficient time for the contractor to safely remove construction equipment, personnel, and concrete barriers from the bridge in order to provide any requested bridge openings.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times after a forty-eight hour notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times after a forty-eight hour notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.789, from June 1, 2004 through January 31, 2005, paragraph (d) is temporarily suspended and a new temporary paragraph (g) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(g) The draw of the Triborough (125th Street) Bridge, mile 1.3, shall open on signal from 10 a.m. to 5 p.m. if at least a forty-eight hour notice is given.

Dated: March 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–7625 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–025]

RIN 1625–AA09

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of Meadowbrook State Parkway Bridge, at mile 12.8, across Sloop Channel, New York. This proposed rule would allow the bridge to remain closed to the passage of vessel traffic from 9 p.m. to midnight, on the Fourth of July each year. This action is necessary to facilitate the annual Fourth of July Jones Beach State Park fireworks display.

DATES: Comments must reach the Coast Guard on or before June 4, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–025), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Meadowbrook State Parkway Bridge has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water in the closed position, unlimited vertical clearance in the full open position. The existing regulations are listed at 33 CFR 117.799(h).

The New York State Office of Parks, Recreation and Historic Preservation, requested that the bridge be allowed to remain closed from 9 p.m. to midnight, during the annual Fourth of July fireworks event at the Jones Beach State Park. The bridge has been closed for the past several years to facilitate this annual event.

Traditionally, this bridge closure was accomplished each year by publishing a temporary final rule in the **Federal Register**. This proposed rule would make the traditional Fourth of July bridge closure part of the permanent drawbridge operation regulations.

The Coast Guard believes this rule is reasonable because it would simplify the traditional bridge closure process that has become a traditional closure each year on the Fourth of July.

Discussion of Proposal

This proposed change would amend 33 CFR § 117.799 by revising paragraph (h), which identifies the operating schedule of the Meadowbrook State Parkway Bridge.

This proposed rule would allow the bridge to need not open for the passage of vessel traffic from 9 p.m. to midnight of the Fourth of July each year.

This proposed rule, by allowing the bridge to need not open during the annual Fourth of July fireworks display at Jones Beach, would facilitate the safe and orderly flow of vehicular traffic to the beach before and after this annual public event.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge closure is of short duration for the purpose of public safety during the annual Fourth of July Fireworks display at Jones Beach.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge closure is of short duration for the purpose of public safety during the annual Fourth of July fireworks display at Jones Beach.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.799(h) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(h) The draw of the Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel, shall open on signal if at least a one-half hour notice is given to the New York State Department of Transportation, as follows:

(1) Every other hour on the even hour.

(2) From April 1 through October 31, on Saturdays, Sundays, and Federal holidays, every three hours beginning at 1:30 a.m. Notice may be given from the telephone located at the moorings on each side of the bridge or by marine radio.

(3) From 9 p.m. to midnight, on the Fourth of July, the Meadowbrook State Parkway Bridge need not open for the passage of vessel traffic.

Dated: March 25, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–7626 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7645]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) existing/ modified	Communities affected
Muskingum River	666–669	Village of Malta.
Muskingum River	665–669	Village of McConnelsville.

ADDRESSES

Village of Malta

Maps are available for inspection at the Village of Malta, 449 Main Street, Malta, Ohio.

Send comments to The Honorable Phillip Barkhurst, Mayor, Village of Malta, P.O. Box 307, Malta, Ohio 43758.

Village of McConnelsville

Maps are available for inspection at Village Hall, 9 West Main Street, McConnelsville, Ohio.

Send comments to Mr. John Thompson, Village Administrator, Village of McConnelsville, 9 West Main Street, McConnelsville, Ohio 43656.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7594 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7647]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Range of BFEs Elevation in feet *(NGVD)	
				Existing	Modified
AR	Beebe (City) White County.	Cypress Bayou	Just upstream of the Union Pacific Railroad.	None	*220
			Approximately 0.85 mile upstream of the Union Pacific Railroad.	None	*220
		Red Cut Slough Tributary	Approximately 0.48 mile downstream of U.S. Highway 67.	None	*224
			At West Mississippi Street	None	*235
		Red Cut Slough Tributary A.	Approximately 1,450 feet downstream of the Union Pacific Railroad.	None	*220
			Approximately 140 feet upstream of California Street.	None	*229
		Red Cut Slough Tributary No. 2.	Approximately 0.41 mile upstream of the confluence with Red Cut Slough.	None	*220
			Approximately 1.40 miles upstream of the confluence with Red Cut Slough.	None	*230

Maps are available for inspection at City Hall, 321 North Elm Street, Beebe, Arkansas.

Send comments to The Honorable Donald Ward, Mayor, City of Beebe, 321 North Elm Street, Beebe, Arkansas 72012.

OK	Tuttle (Town) Grady County.	Coal Creek—Lower Reach	Approximately 200 feet upstream of the confluence with the Canadian River.	None	*1,197

State	City/town/county	Source of flooding	Location	Range of BFEs Elevation in feet *(NGVD)	
				Existing	Modified
			Approximately 0.5 mile upstream of North Sarah Road.	None	*1,235
		Coal Creek Tributary—Lower Reach.	At the confluence with Coal Creek—Lower Reach.	None	*1,221
			Approximately 0.6 mile upstream of the confluence with Coal Creek—Lower Reach.	None	*1,232
		Worley Creek—Lower Reach.	Approximately 1,530 feet downstream of East Silver City Ridge Road.	None	*1,204
			Approximately 140 feet upstream of State Highway 37.	None	*1,243

Maps are available for inspection at the Town Hall, 301 West Main Street, Tuttle, Oklahoma.

Send comments to The Honorable Elberta Jones, Mayor, Town of Tuttle, Town Hall, 301 West Main Street, Tuttle, Oklahoma 73089.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–7595 Filed 4–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571 and 572

[Docket No. NHTSA 2003–11398]

Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a two part petition submitted by the Alliance of Automobile Manufacturers (Alliance) under a cover letter of July 19, 2002. The petitioner asked the agency to amend: (1) Part 572 by adding two new subparts to set out specifications for the Occupant Classification Anthropomorphic Test Devices (OCATD–5 and –6), and (2) Federal Motor Vehicle Safety Standard (FMVSS) No. 208 specifications to allow alternative use of OCATD–5 and –6 for manufacturer certification of static suppression test requirements.

FOR FURTHER INFORMATION CONTACT: For Non-Legal Issues: Mr. Stan Backaitis, Office of Crashworthiness Standards, NVS–110, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–4912. Fax: (202) 473–2629.

For Legal Issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992, Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: The Alliance of Automobile Manufacturers (Alliance) in a letter of July 19, 2002, petitioned the National Highway Traffic Safety Administration (NHTSA) to amend part 572 by adding two new subparts to set out specifications for the Occupant Classification Anthrpomorphic Test Devices (OCATD–5 and –6) and to amend FMVSS No. 208 to allow alternative use of OCATD–5 and –6 for manufacturer certification of advanced air bag static suppression test requirements. The petition was accompanied by a University of Michigan Transportation Research Institute (UMTRI) based Technical Report containing the following attachments: (1) "Anthropometric and Performance Standards for the OCATDs" (Attachment A), (2) "Quantitative Evaluation of the Seat Pressure Measurements, Body Weight Distribution and Posture Effects on Those Measurements" (Attachment B), and (3) OCATD–5 and –6 drawing packages (Attachments C and D, respectively).

Issues Raised in the Petitions

FMVSS No. 208 requires that frontal passenger air bag systems either suppress deployment or deploy in a low risk manner during frontal collisions when a small child is present. Also the manufacturer must pass the dynamic performance requirements of the standard, which usually requires deployment of the air bag for the 5th percentile female dummy. One provision of the standard specifies that suppression systems may be tested using either small adult female and six-year-old Hybrid-III dummies, or human volunteers who approximately match those body sizes. The Alliance states that:

(1) Crash test dummies are poorly suited to the development and certification of the occupant classification components of some advanced air bag systems because:

- Hybrid-III and THOR crash dummies do not produce required humanlike seat surface pressure distributions,
- Development of occupant classification systems requires testing of surrogates in a wide range of postures, but many postures that are possible for humans cannot be attained with the specified crash test dummies, and
- Hybrid-III dummies are difficult to position and may not appear human-like to some types of sensors used for occupant classification purposes.

(2) Testing with human volunteers is time-consuming and requires a large number of subjects. It reduces repeatability to a level that is unacceptable for product development and would not provide the objectivity of compliance should the vehicle subsequently be tested with different human beings.

(3) The OCATD–5 and –6 should be added to FMVSS No. 208 as an optional means of certifying vehicles to the static suppression test requirements because (1) they are capable of comparable performance to the Hybrid-III 6-year-old and 5th percentile female dummies for purposes of occupant classification using pressure distribution discrimination, and (2) they offer the advantage of superior flexibility and posture capability compared to the Hybrid-III dummies.

Background

Appendix D of the Final Rule preamble for FMVSS No. 208, "Occupant crash protection," (65 FR 30743, May 12, 2000) notes, that:

> Advanced air bag systems can use various types of sensors to obtain information about crashes, vehicles and their occupants. This information can be used to adapt the performance of the air bag to the particular circumstances of the crash. As noted above, it can be used in determining whether an air bag should deploy, when it should deploy, and (if it has multiple inflation levels) at what level of inflation (pressure rise) and inflation rate (pressure rise rate).
>
> * * * * *
>
> Strategies for static occupant detection systems include the ability to make a determination of whether air bag deployment is warranted (or what level of inflation is appropriate) for the size and/or position of the occupant (*e.g.*, whether the occupant is a small child or a full-sized adult, or whether the occupant is against the seat back or is sitting on the edge of the seat, closer to the air bag). These technologies may be used in conjunction with seat weight sensing/pattern recognition systems (or seat belt use and crash severity sensing) to improve the reliability of the occupant classification and location estimates.

Furthermore, the agency noted in 65 FR 30693, May 12, 2000, that:

> For our proposed static test requirements for systems which suppress air bags in the presence of infants and children (*e.g.*, weight sensors), we proposed a new option which would permit manufacturers to certify to requirements referencing actual children, instead of 3-year-old and 6-year-old child dummies, in a stationary vehicle to test the suppression systems. (This option would not apply to systems designed to suppress the air bags only when an infant is present.) Adult human beings could also be used in the place of 5th percentile adult female dummies for the portions of those static test requirements which make sure that the air bag is activated for adults.

The Alliance stated in its petition that:

> Development and testing of occupant classification systems also requires testing surrogates in a wide range of postures, but many postures that are possible for humans cannot be attained with crash dummies. In particular, the Hybrid-III dummies are difficult to position and may not appear human-like to some types of sensor systems used for occupant classification. Testing with human volunteers, which is time-consuming and requires large numbers of subjects, reduces repeatability to a level that is unacceptable for product development and would not provide the objectivity of compliance should the vehicle subsequently be tested with different human beings.

The Alliance cited a 1999 UMTRI study in which it is claimed that "existing human surrogates, such as the Hybrid-III and THOR crash test dummies, do not produce human-like seat surface pressure distributions (Reed *et al.*, Technical Report UMTRI–99–46, 1999b)."

A similar observation was voiced in Toyota's comments to the FMVSS No. 208 Supplementary Notice of Proposed Rulemaking [NHTSA–1999–6407] for advanced air bags concerning the suitability of current test dummies and humans in automatic suppression tests. Toyota urged the agency to work initially with industry in developing better test dummies capable of activating automatic suppression systems when occupancy conditions warrant deployment suppression. Mitsubishi's comments echoed this request. Toyota claims as many as 50 percent of the tests conducted by/or on behalf of Toyota with the 5th percentile adult female test dummy did not detect the presence of that dummy at the weight needed to turn off the suppression system. Toyota also voiced dissatisfaction with the option of certifying their systems using humans who are within specified height and weight range. Toyota believes those parameters allow too much variation in physiology to make humans practical test objects. Toyota maintained that NHTSA should specify that it will conduct its compliance tests using the same test subjects or devices that vehicle manufacturers employed to certify their suppression systems.

In line with these concerns, the petitioners stated that specialized test devices need to be developed to represent humans quantitatively in at least the following set of characteristics: (1) External anthropometry, (2) accurate skeletal linkage and joints, (3) total body mass and segment masses, and (4) most importantly, seat surface pressure distributions. As a result, the Alliance has provided financial support for the development of two such devices, called OCATDs, in the small adult female and six-year-old child configurations. In March 2000, First Technology Safety Systems (FTSS) was awarded the prime contract to develop and build the prototype OCATDs. UMTRI, as a subcontractor to FTSS, was to provide anthropometry and performance specifications for the small adult female and six-year-old child.

An initial literature search was conducted by UMTRI to establish the body dimensions and surface contours of the typical six-year-old child. This information was used to determine the anthropometric specifications for the OCATD–6. Subsequently, seat surface pressure distributions produced by sixty-eight children and small women were measured in a range of seats and postures to determine the pressure distribution performance targets for both the small adult female OCATD–5 and OCATD–6.

A second research program at UMTRI involved quantitative comparisons of the seat surface pressure distributions and weight distributions produced by the small adult female and six-year-old Hybrid-III dummies. The distributions were measured and compared to those produced by human occupants and the OCATDs [Reed *et al.*, Technical Report UMTRI–2000–38, 2000]. The quantitative comparison was made using pressure-distribution parameters that were demonstrated in the previous research to have value for occupant classification purposes. The positions and postures of the surrogates were recorded using a coordinate measurement machine to quantify the repeatability of the installation procedures. In addition, the support forces under the feet of the surrogate were recorded to evaluate the extent to which the weight borne by the seat varied with posture.

OCATD Construction

The UMTRI report notes that initial anthropometry and weight targets for the OCATD–5 and OCATD–6 were defined by the stature and weight ranges specified in FMVSS No. 208. OCATD–5 represents a 5th percentile size small female with a stature of 1450 mm (55 in.) and weight of 46.7 kg (103 lb). OCATD–6 represents a six-year-old child with a stature of 1181 mm (46.5 in.) and weight of 23.5 kg (51.6 lb). These specifications were subsequently verified by using the Consumer Product Safety Commission and National Health

and Nutrition Examination Survey (NHANES) data bases as reference.

The OCATDs were constructed as soft, deformable, headless, and armless devices having the shape, anthropometry, and mass of the human torso and legs. The OCATD's fundamental construction is a soft deformable urethane flesh material molded over a human-like skeleton similar to a surrogate developed in prior years for the seat manufacturing industry. [Don Adams *et al,* SAE #1999–01–0627]. The OCATD skeleton is made from molded plastic with metal inserts at the joints. Pivots at the T12/Ll and L5/S1 vertebrae locations allow the spine to rotate in the sagittal [1] plane, and ball joints at the femur/pelvis interface allow hip rotation and leg abduction/adduction to simulate various human postures. The joints can be locked, allowing the dummy to sit erect without external support. The torso section is divided into three segments—upper thorax, abdomen, and pelvis/thighs. The abdominal segment is made of compressible urethane foam to allow the device to lean forward, and is removable to access ballast weights.

Torso Postures

The UMTRI report claims that the OCATD devices can be pre-positioned to three torso orientations: Normal (design), reclined to 48 degrees, and erect. The normal torso orientation of a seated occupant, as determined in the UMTRI seating study, is defined by a thorax back angle of 24.6 degrees relative to the vertical. In erect orientation, the OCATD spine joints can be locked into position for unsupported seating. The posture and torso orientation can be monitored with tilt sensors in the pelvis and spine.

Analysis of the Petition

The Alliance petition notes that the OCATDs have only slightly better performance than Hybrid-III 6-year-old and 5th percentile female dummies for purposes of occupant classification using pressure distribution discrimination. However, the Alliance believes the OCATDs may have the added advantage of superior flexibility and posture capability compared to the Hybrid-III devices. The Alliance thinks the results of its research will "provide quantitative guidance to manufacturers for selecting surrogates, and developing test procedures for use with advanced air bags".

Since the Alliance petition is based primarily on UMTRI's evaluation of the OCATDs, we have examined the UMTRI report for the benefits claimed in the Alliance petition. The UMTRI report notes that the measured seat pressure data were analyzed with three objectives:

1. To determine the pressure distribution parameters from human tests that provide the greatest ability to classify occupant size,
2. To identify performance targets for the OCATD devices with respect to seat surface distribution, and
3. To assess the performance of the OCATDs relative to the performance targets.

Pressure Distribution Parameters

The UMTRI report notes that of the measured data, three parameters emerged that could be used to describe the seat surface pressure distributions. UMTRI found that in sorting pressure distributions by the resulting R^2 value, the best predictors for normal seating posture were: (1) The PeakRowWidth [2] (R^2=0.88), (2) CentroidRowWidth [3] (R^2=0.86), and (3) PseudoweightLb [4] (R^2=0.85). For non-normal seating postures, the best predictor is the PseudoweightLb (R2=0.78). Further studies indicate that correlation among parameters, using their multiples, do not substantially improve the prediction of body weight.

The analysis of a large number of pressure distribution parameters allowed UMTRI to specify and evaluate the OCATD performance. The OCATD pressure distributions are determined, to a large extent, by the weight of the occupant and the external anthropometry (hip breadth, buttock-to-knee length, *etc.*). The analysis of pressure distribution data from human subjects demonstrated that the parameters of pressure distribution that are useful for occupant classification also relate to scale (width and length of the respective contact area of the buttocks with the seat cushion). Consequently, UMTRI believes that using representative anthropometry for the OCATDs is a major part of achieving representative pressure distributions.

UMTRI noted that the observed OCATD seated pressure parameter values can be assessed by comparing them to the distribution of similar parameter values expected for people who meet the OCATD stature and weight criteria. If the OCATD parameter values lie within one standard deviation of the target, the OCATDs are substantially representative of the occupant category. If the discrepancy is larger than two standard deviations, the OCATD parameter values are unusual for the corresponding anthropomorphic category.

Using this approach, UMTRI found the quantitative performance of the OCATDs with respect to human pressure distribution to be good. Among the top ten classification parameters, the OCATDs generally differed by less than one standard deviation from the targets. UMTRI claims that in percentage terms, the deviations from the targets are generally less than five percent.

Pressure Distribution Measuring Systems

UMTRI observed that defining the precision and accuracy for seat pressure distribution measurement systems is extremely difficult. A number of very difficult to control variables plague the technology of pressure measurements. For example, when a pressure mat is placed between two flat surfaces, pressure can be applied and measurements made in readily quantified ways. However, the interface between a occupant's compliant buttocks and a compliant seat is not flat, and may include substantial shear stress, as well as normal stress related pressure measurements. Thus, in actual evaluation of such compliant surfaces, it is very difficult to determine the "true" pressure. UMTRI notes that measurements of seat surface pressure distribution are at best regarded as approximate and used as relative measures only. For example, measuring the pressure distribution on two seats with the same subject might lead to the conclusion that the pressure was higher on one seat than the other. UMTRI states that the difference can not be confidently quantified within ten or 15 percent because of differences in the shape and contours of the contact area and the limitations of the sensor system. Accordingly, the ability of the OCATDs to produce consistent measurements in compliance tests would always be in question.

Application Issues

UMTRI indicated that pressure measurements are strongly affected by the occupant's posture. Over the range of postures and subjects studied, the effects of posture on pressure distribution may be larger than the effects of body size. This poses problems for validating the OCATD

[1] Sagittal—inferior/superior plane parallel to the longitudinal axis of the body.

[2] Lateral width of pressure distribution at fore- and aft location at the highest pressure, evaluated under contact area exceeding 10mmHg.

[3] Summation of pressures across all sensors multiplying by sensor area and expressing the results in pounds.

[4] PseudoweightLB is the product of the sensor area and pressure and is a rough measure of the weight borne by the seat cushion.

pressure distribution performance. Thigh posture strongly affects contact area, and is one of the parameters most useful for occupant classification, making it an important factor for OCATD validity. UMTRI suggested that the OCATD should be used in a range of thigh postures from fully to minimally engaged, representing a range of the seat loading conditions expected in the field. The extremes might capture the human variance in "normal" postures and be an appropriate way to specify OCATD positioning for certification testing.

The UMTRI test data show that the OCATD pressure distributions are likely to be most representative of human pressure distributions in soft seats. In seats that are very firm, the OCATD contact area tends to be smaller than that of comparably sized humans. This is because the OCATD flesh is stiffer than that of humans. In a firm seat, the OCATD flesh does not spread as widely as the softer human tissue, and consequently produces a smaller contact area. However, UMTRI found that differences in contact areas between firm and soft seats were smaller than differences due to leg(s) postures.

Repeatability and Reproducibility

UMTRI observed that because of limitations of pressure distribution measurement technology, the OCATD itself is probably more repeatable than the sensors used to measure the contact pressures. UMTRI also found, that the posture and the positioning of the OCATD appeared to be more important than the shape or stiffness of the device in determining the seat surface pressure distribution. Hence, repeatability and reproducibility studies of the OCATDs need to focus primarily on installation variability. In addition, UMTRI recommended that procedures and test tools need to be developed to verify that soft tissue stiffness and contours of the OCATDs remain within specification.

Comparison of OCATDs With Hybrid-III Dummies

The UMTRI report claims that seat surface pressure distributions produced by the OCATDs are visually more similar to human pressure distributions than those produced by the Hybrid-IIIs. However, our review of UMTRI's quantitative analysis found that the small adult female Hybrid-III is approximately as representative of small adult women as the OCATD–5 with respect to the parameters of seat surface pressure distribution that are related to the occupant's body weight.

UMTRI found the six-year-old Hybrid-III pressure distribution parameters to be somewhat less representative of six-year-old children than the OCATD–6. The pressure distributions were somewhat narrower and smaller in area than those obtained with humans. However, even in this respect, the data from the UMTRI study indicated that pressure distributions produced by the Hybrid-III dummies were generally within the range of variability expected for humans of similar size.

UMTRI noted that OCATD buttock contours and spacing of the peak pressure from the ischial tuberosity bones appear to be a better match to the human pressure distributions than those produced by the Hybrid-IIIs. UMTRI observed that much of the correspondence is not meaningful, because neither the contours nor the location and spacing of these peak pressures are useful for occupant classification purposes. These observations appear to project UMTRI's findings based on this specific study. However, the agency is aware that some suppression systems utilize seat map pressure sensors to classify the occupant based upon its morphology (*www.iee.lu/EN/AutoProd/*).

The only parameter in which the Hybrid-IIIs differed substantially from the OCATDs and the human targets in the UMTRI study was "PseudoweightLb". However, "PseudoweightLb" is difficult to interpret because it is affected by the shape and contours of the contact surface. The pressure distribution measurement system measures the aggregate force perpendicular to the surface of the measurement pad. However, as described above, shear stresses on compliant surfaces are in evidence and responsible for much of the measurement inaccuracies. Thus, UMTRI believes, the more flattened buttock shape of the Hybrid-III dummies may have accounted for the difference in "PseudoWeightLb" assessment.

UMTRI noted that the OCATDs are easier to position and are capable of a wider range of postures than the Hybrid–III counterparts. However, the FMVSS No. 208 advanced air bag certification test procedures do not require a large range of postures for air bag suppression testing. Thus, while there might be interest by some vehicle manufacturers to employ the OCATDs for vehicle development purposes, there is virtually no advantage in using them in FMVSS No. 208 compliance tests.

As only one of each type of OCATDs was used by UMTRI in its testing, it is possible that differences within any new surrogate category could affect the findings. These differences may become even larger through their use and as the flesh materials age. Also, as with any study of this type, the applicability of the findings is limited to the types of seats and postures used. The characteristics of the pressure distribution measurement system would also greatly influence the test results. In particular, a pressure sensing system with lower resolution, such as most of those used by vehicle manufacturers in production seats, may show substantially larger or smaller differences between the various surrogates and the humans. Inasmuch as the Alliance has not provided estimates of potential variabilities, the agency is not in a position to address this issue.

Other Considerations

The agency has no testing experience with the OCATDs. The Alliance's (summer 2002) offer to provide the agency one of the OCATDs for evaluation purposes did not materialize in its delivery; while the agency, due to other high priorities and in expectation of receiving the OCATD, had not pursued its independent acquisition. However, in the interim, the agency has gained considerable knowledge about the OCATDs during the review of the UMTRI reports, such as their usefulness and applicability for air bag suppression purposes. In addition, a limited amount of information was also obtained when FTSS made an introductory presentation to agency staff in the spring of 2002, and at the government-industry meeting in July 2002. The latter information is available on the NHTSA Web site.

FTSS has disclosed that it has sold over 20 OCATDs. A larger portion of them are female versions. The purchasers are mostly manufacturers producing vehicles for the U.S. market. However, the agency has no knowledge on how the manufacturers are using these test devices, whether their use is providing correct signals for sensing the need to activate/deactivate deployment systems, and whether the devices can effectively replace the human population for the intended purposes.

FTSS also indicated that some users may be considering capacitive systems for activation purposes. In such systems, FTSS suggested the possibility of incorporating copper wire mesh that would be imbedded in the OCATD skin. The intention of this effort would be to simulate the capacitive properties of the human body. However, UMTRI notes that the built-in electrical properties would not necessarily reflect a particular size human. Accordingly, these types of systems by themselves may not be sufficient discriminators for suppression purposes. It appears that

manufacturers considering use of capacitive systems would have to find other methods to match the outputs of complementary weight distribution or pressure sensing systems.

Summary of Analysis and Conclusions

Review and analysis of the documents presented in the petition lead to the following observations and conclusions:

1. Contact pressure measuring technology shows the need for a substantial amount of development before it can be used reliably and repeatably for pressure distribution and pressure pattern measurements.

2. Since the choice of the in-vehicle seat based pressure sensing system is controlled by vehicle manufacturers, the agency would have great difficulty assuring the suitability and appropriateness of the OCATDs for assessing adequacy and effectiveness of any particular suppression system for the intended human population.

3. Because vehicle models and seat designs change quite frequently, the built-in pressure sensing system in a vehicle seat might be tailored for the OCATDs rather than correctly sensing the suppression for the intended population groups.

4. The supporting materials provided with the petition indicate that the proposed OCATDs are only marginally different or better, if at all, than the Hybrid-III dummies in replicating human-like seating pressure distribution measurements. Accordingly, there is virtually no advantage in using the OCATDs as substitutes for Hybrid-III dummies within the parameters currently specified for compliance suppression testing.

5. Pressure distributions for the OCATDs and Hybrid-III dummies fall within the general range of variability expected for humans of similar size. Thus the OCATDs do not provide any more effective sensing for deployment suppression than the Hybrid-III dummies.

6. The OCATDs may have some advantages for more accurate pressure measurement distribution on firmer seats, but this is still to be demonstrated.

7. Posture variations and leg support appear to have more significant effects on pressure distribution parameter measurements than the occupant's weight and size. Procedures to stabilize the OCATD set-up and assure consistency of contact pressure measurements are still to be established.

8. The agency has no knowledge that the OCATDs are easier to position than comparable Hybrid-III dummies for certification purposes. Considering the small size and low weight of the Hybrid-III small female and 6-year-old dummies, the agency does not believe the supplied data support significant use advantages between the two dummy types.

9. While the petitioner notes that the OCATDs offer a significantly wider range of postures than Hybrid-III dummies, the agency compliance requirements limit the application of the female dummy to only one posture and the six-year-old to four seated posture configurations (normally seated, leaning against the door, reclined and full up front) in suppression tests.

10. The agency has not tested or evaluated either of the petitioned OCATDs or pressure sensing instruments. Agency personnel would have to develop technical expertise and equipment to deal with the devices and the various sensing technologies as well as their limitations for no apparent benefit.

11. To test, evaluate, and incorporate the OCATDs, as petitioned by the Alliance, would require a large expenditure of scarce agency resources and divert them from work that would yield far greater safety benefit.

12. In view of the limitations and/or questionable usefulness of the OCATDs for occupant sensing, their alternate use for compliance certification would not be acceptable either from the safety assurance point of view or for avoidance of claims and counterclaims on the appropriateness of the test results with respect to human test subjects.

13. The agency sees no reason why vehicle manufacturers should not use the OCATDs for their own purposes as opposed to aid in certification, if they are convinced that OCATDs will provide them superior flexibility in the design of better functioning air bag suppression systems. However, the agency sees neither any advantages nor need in using the OCATDs within the parameters currently specified for deployment of suppression certification tests.

Summary of Agency Position and Decision

The agency has decided to deny the Alliance petition to incorporate the OCATD–5 and –6 test devices into part 572. The agency finds that the Alliance has not provided compelling evidence that would support the need to specify the OCATD–5 and –6 devices as alternates to the Hybrid-III small female and the six-year-old dummies, or human volunteers, in FMVSS No. 208 for suppression certification tests. The Alliance documentation failed to demonstrate how use of the OCATDs would provide an advantage due to their superior flexibility and posture capability in the currently specified agency test procedure. Accordingly, the agency is also denying the Alliance petition for alternate use of OCATD–5 and –6 for manufacturer certification to static suppression test requirements in FMVSS No. 208.

Agency analysis of the petitioner's data indicates that of the two OCATDs, only the OCATD–5 appears to have marginally better pressure distribution indications than the respective Hybrid-III dummy. Even so, both OCATDs and Hybrid-III dummies fall within the general range of variability expected for humans of similar size. In addition, the agency has no substantiating evidence to verify the Alliance claim that OCATDs are easier to position than comparable Hybrid-III dummies. Considering the small size and low weight of the Hybrid-III small female and the 6-year-old dummies, and the few positions specified for FMVSS No. 208 certification, the agency believes the supplied data do not support OCATDs' use for static air bag deployment suppression tests.

The agency does not agree with the Alliance assertion that development and testing of occupant classification systems, as currently specified in the agency compliance procedures, require testing surrogates capable of a wide range of postures. It needs to be noted that agency compliance specifications limit the female dummy set-up to only one posture for suppression testing and four different postures for the six-year-old. The agency has had no difficulties in its tests to attain the required positions and postures with the respective Hybrid-III dummies. Furthermore, GM and Honda have already certified advanced static suppression systems without indication of the need for OCATDs to advance this technology.

We agree with the Alliance that testing with human volunteers is time-consuming and requires large numbers of subjects. However, none of the available human surrogates will assure 100 percent suppression effectiveness. The agency allowed testing with humans in order to permit those vehicle manufacturers who are uncomfortable with the results from dummy tests to certify the suppression systems with suitable human vehicle occupants.

Our review of the contact pressure measuring technology for shaped and conforming seat cushions show the need for a substantial amount of further research before "true" pressure measurements can be made. Accordingly, the agency believes the

application of OCATDs for compliance certification is premature. Without reasonably standardized pressure measuring technology, the consistency of the OCATDs' performance can not be properly evaluated.

The agency has made provisions in the advanced air bag rulemaking to allow introduction of new technologies for suppression and the development of low level deployment activation systems. However, agency review of the proposed OCATD technology, based on the Alliance report, indicates that the OCATDs mostly parallel the capabilities of currently specified Hybrid-III test dummies for measuring seating pressures and do not provide additional occupant sensing and discrimination capabilities. The data in the UMTRI technical report indicate that there is very little potential to develop the OCATDs into better or more powerful discriminatory tools without substantial further research. Therefore, it would not be cost beneficial for the agency to initiate the extensive and expensive process incorporating the OCATDs into part 572 merely to have them available as parallel surrogates to the Hybrid-III dummies. However, the agency does not discourage use of the OCATDs by those vehicle manufacturers who are convinced that OCATDs will provide them the needed flexibilities for the development of better functioning suppression systems.

In conclusion, NHTSA denies both parts of this petition for rulemaking based on lack of compelling evidence that adoption of the OCATDs into part 572 and their specification in FMVSS No. 208 would improve the suppression and activation/deactivation of air bag systems and the safety of the motoring public. Furthermore, the agency has no plans to conduct research on design and performance of the OCATDs with the intent purpose either to incorporate them into part 572 or to specify their use for deployment suppression certification tests in FMVSS No. 208.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: March 30, 2004.

Claude H. Harris,

Director, Office of Crash Avoidance Standards.

[FR Doc. 04–7546 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ08

Endangered and Threatened Wildlife and Plants; Proposed Removal of *Helianthus eggertii* (Eggert's Sunflower) From the Federal List of Endangered and Threatened Species and Determination That Designation of Critical Habitat Is Not Prudent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the plant *Helianthus eggertii* (Eggert's sunflower) from the List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act), because recovery actions have secured a number of populations and identified additional populations not previously known. Therefore, the threatened designation no longer correctly reflects the current status of this plant. This action is based on a review of all available data, which indicates that the species is more widespread and abundant than was documented at the time of listing, is more resilient and less vulnerable to certain activities than previously thought, and is now protected on Federal, State, and county lands. Due to the recent development of a management plan for *H. eggertii*, a management plan for the barrens/woodland ecosystem, and an Integrated Natural Resources Management Plan at the U.S. Air Force's Arnold Engineering and Development Center, on whose land a significant number of sites/populations occur, new management practices will include managing for, and monitoring the areas that contain, this species. Occurrences of *H. eggertii* are also found on six other Federal, State, or county lands, three of which now have conservation agreements with us to protect, manage, and monitor the species.

At the time of listing, there were 34 known *Helianthus eggertii* sites occurring in 1 county in Alabama, 5 counties in Kentucky, and 8 counties in Tennessee. The species was not defined in terms of "populations" at that time. Increased knowledge of *H. eggertii* and its habitat has resulted in increased success in locating new plant sites. Presently, there are 279 known *H. eggertii* sites (making up 68 populations) distributed across 2 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. Consequently, *H. eggertii* is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range and, therefore, is no longer considered to be threatened. If made final, this rule would remove *H. eggertii* from the list of threatened and endangered species.

In response to a court order, we have also reconsidered whether designating critical habitat for *Helianthus eggertii* would be prudent based on this species' current status. We have determined that such a designation would not be prudent because, as set out in detail elsewhere in this proposal, we believe the species no longer warrants listing under the Act. There is accordingly no area which meets the definition of critical habitat.

DATES: We will consider comments on this proposed delisting if they are received by June 4, 2004. Public hearing requests must be received by May 20, 2004.

ADDRESSES: If you wish to comment on this proposed delisting, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211; facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposed delisting will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed delisting. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Helianthus eggertii;*

(2) Additional information concerning the range, distribution, location of any

additional populations, and population size of this species; and

(3) Current or planned activities in the species' habitat and these activities' possible impacts on this species.

Comments may be submitted as indicated under **ADDRESSES.** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. A respondent may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

In making a final decision on this proposed delisting, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposed rule. Comments and materials received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

The Act provides for a public hearing on this proposed delisting, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Field Office (see **ADDRESSES** section).

Background

Helianthus eggertii (Eggert's sunflower) is a perennial member of the aster family (Asteraceae) known only from Alabama, Kentucky, and Tennessee. Although it was originally described in 1897, most collections have been made since 1990, when extensive searches for the species began (Jones 1991, USFWS 1999a). The species is commonly associated with the barrens/woodland ecosystem, a complex of generally subxeric (somewhat dry) plant communities maintained by drought and fire with a grassy ground cover and scattered medium-to-small-canopy trees (USFWS 1999a).

Helianthus eggertii is a tall plant, growing up to 2.5 meters (8 feet), with round stems arising from fleshy rhizomes (lateral storage stems that grow along or just below the soil's surface). The stems and upper leaf surfaces have a blue-waxy coloration, and that and the lower leaf surfaces are conspicuously whitened (Jones 1991). It has opposite (rarely whorled) leaves that are sessile (without a stalk), lanceolate (lance-shaped) to narrowly ovate (egg-shaped) in shape, and are either scabrous (rough) or glabrous (smooth) on the upper surface. Leaf edges are smooth or minutely toothed and the tip is usually pointed. Large yellow flowers 8 centimeters (3 inches) in diameter are borne on the upper third of the stem. Seeds are blackish or grayish and mottled, 5 to 6 millimeters (0.20 to 0.24 inch) long, faintly striated (striped), and with a few scattered hairs. Flowering begins in early August and continues through mid-September and achenes (small, dry, hard, one-celled, one-seeded fruit that stays closed at maturity) mature from early September to early October (Jones 1991). Jones (1991) observed fruit set at between 5 and 25 seeds per flower head. Originally, seed germination rates were thought to be low (rarely exceeding 25 percent), possibly requiring exposure to cold to break dormancy (USFWS 1999a). However, recent data suggest that seed germination rates are relatively high (around 65 percent) if the seeds go through a stratification process (a period of cold weather, moisture, and darkness needed to break dormancy) (Cruzan 2002).

This sunflower develops an extensive rhizome system that may result in the production of dense clusters or patches of stems. These rhizomes can live for many years. Because of this extensive rhizome system, the plant does not have to produce seeds every year to ensure its survival. If environmental conditions change (*e.g.*, increased competition, shading, etc.), it can survive for several years by vegetative means, as Jones (1991) has noted in several populations. Plants may also be established from seeds within these patches, so a mix of different individuals can eventually contribute to these extensive patches (Jones 1991). Cruzan (2002) concluded that the level of genetic diversity in this species appears to be relatively high and that the highest levels of genetic diversity occur in the southern portion of the species' range. Cruzan (2002) also concluded that the range of *Helianthus eggertii* is not geographically subdivided into distinct genetic units.

Helianthus eggertii is a hexaploid (composed of cells that have six chromosome sets) sunflower, and, although its distinctiveness as a species has been established by morphological studies (USFWS 1999a) and biochemical studies (Spring and in Schilling 1991), it probably outcrosses (breeds with less closely related individuals) with other hexaploid sunflowers (Jones 1991). It is not known how commonly outcrossing occurs and to what degree this can eventually degrade the genetic integrity of the species. *Helianthus strumosus* (pale-leaved woodland sunflower), occasionally found in association with *H. eggertii*, has been identified as a sunflower with a compatible ploidy (number of sets of chromosomes) level (Jones 1991).

Helianthus eggertii typically occurs on rolling-to-flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. It persists in, and may even invade, roadsides, power line rights-of-way, or fields that have suitable open habitat. The distribution of this species shows a strong correlation with the barrens (and similar habitats) of the Interior Low Plateau Physiographic Province, with some records from the Cumberland Plateau Section of the Appalachian Plateau Physiographic Province.

When *Helianthus eggertii* was listed as threatened in 1997, it was known from only 1 site in one county in Alabama, 13 sites in 5 counties in Kentucky, and 20 sites in 8 counties in Tennessee. While the species was not defined in terms of "populations" at that time, the Alabama site was described as vigorous, while most sites in Kentucky contained less than 15 stems, with 4 sites having 5 or fewer stems, and about 50 percent of the Tennessee sites contained fewer than 20 stems (62 FR 27973, May 22, 1997). When the recovery plan for this species was finalized in 1999, there was 1 known site in Alabama, 27 sites in 6 counties in Kentucky, and 203 sites in 12 counties in Tennessee.

The term "population," as it relates to *Helianthus eggertii*, was first defined in the Recovery Plan as "a group of plants that is isolated by geographic discontinuity or a distance of one-half mile" (USFWS 1999a). Recent studies on *H. eggertii* genetics by Cruzan (2002) suggested that a population of fewer than 100 flowering stems is unlikely to be sufficiently large enough to maintain genetic diversity. Cruzan (2002) also estimated a reasonable fragmentation threshold of 1 kilometer (km) (0.6 mile); that is, sites within that distance of each other were close enough to exchange genetic material. The further use of the term "population" in this document

indicates a site, or sites, that cumulatively have more than 100 flowering plants and that do not occur more than 1 km apart. Based on 2003 data from the Alabama, Kentucky, and Tennessee Natural Heritage Programs and the Service, there are 3 known sites in 2 counties in north Alabama, 33 sites in 9 counties in central Kentucky, and 243 sites in 15 counties in middle Tennessee (Alabama Natural Heritage Database 2003; Kentucky Natural Heritage Database 2003; Tennessee Natural Heritage Database 2003; USFWS unpublished data). Applying the definition above to the current situation for this species, Alabama has 3 populations, Kentucky has 18 populations, and Tennessee has 47 populations; 27 of these 68 populations occur on public lands. Furthermore, the total of 279 currently known sites of *Helianthus eggertii* far exceeds the 34 sites known at the time the species was listed.

Previous Federal Actions

Federal actions on this species began in 1973, when the Act was first passed. Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 9451, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act). By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *H. eggertii* was included in the Smithsonian report and also in the July 1, 1975, Notice of Review (40 FR 27823). On June 16, 1976, we published a notice in the **Federal Register** (41 FR 24523) that determined approximately 1,700 vascular plant taxa, including *H. eggertii*, to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act required that all proposals that were not finalized within two years be withdrawn. On December 10, 1979 (44 FR 70796), we published a notice withdrawing all plant species proposed in the June 16, 1976, rule. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), included *Helianthus eggertii* as a category 2 species. Category 2 species were described as those taxa for which the Service had information indicating that proposing to list them as endangered or threatened might be appropriate, or for which substantial data on biological vulnerability and threats were not known at the time or were not on file to support the listing. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), 1985 (50 FR 39526), and 1990 (55 FR 6184).

All plant taxa included in the comprehensive plant notices are treated as if under a petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. This was the case for *H. eggertii* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, we found that the petition calling for the listing of *H. eggertii* was not warranted because of insufficient data on its distribution, vulnerability, and degrees of threat. We funded a survey in 1989 to determine the status of *H. eggertii* in Alabama, Kentucky, and Tennessee. In 1990, the Service had not yet received the results of the survey we had funded and it was believed that additional surveys of potential habitat and further identification of threats were needed before a decision could be made on whether to propose listing the species.

In 1991, we accepted a final report on these surveys (Jones 1991). Information contained in the 1991 final report completed informational gaps and provided what was then thought to be sufficient data to warrant preparation of a proposed rule to list the species. *Helianthus eggertii* was accepted as a category 1 species on August 30, 1993, and was included in the revised Notice of Review for Native Plants published on September 30, 1993 (58 FR 51144). On September 9, 1994 (59 FR 46607), we published a proposal to list *H. eggertii* as a threatened species in the **Federal Register**. A final rule placing *H. eggertii* on the Federal List of Endangered and Threatened Plants as a threatened species was published on May 22, 1997 (62 FR 27973). That decision included a determination that the designation of critical habitat was not prudent for *H. eggertii*.

The final Recovery Plan for *Helianthus eggertii* (Recovery Plan) was completed in December 1999. The Recovery Plan provides the following criteria to consider *H. eggertii* for delisting—(1) the long-term conservation/protection of 20 geographically distinct, self-sustaining populations (distributed throughout the species' range or as determined by genetic uniqueness) must be provided through management agreements or conservation easements on public land or land owned by private conservation groups and (2) these populations must be under a management regime designed to maintain or improve the habitat and each population must be stable or increasing for 5 years. There are presently 27 populations that are under a management regime that benefits the species and that occur on public land or land owned by a private conservation group (*i.e.*, The Nature Conservancy (TNC)). These are geographically distinct (separated by more than 1 km (0.62 miles)), and self-sustaining (greater than 100 flowering stems). These populations are scattered throughout the species' historic range. We have 5 years of monitoring data on each of the 27 populations that show they are stable or increasing. We have finalized cooperative management agreements with Kentucky Transportation Cabinet (one population), Tennessee Wildlife Resources Agency (seven populations), and Mammoth Cave National Park (three populations) for the long-term protection of *H. eggertii*. We are in the process of finalizing cooperative management agreements that will protect the remaining populations that occur on public lands and TNC property. We expect to have these agreements in place before this rule is finalized. These cooperative management agreements will remain in place even if the species is delisted.

Federal involvement with *Helianthus eggertii* subsequent to listing has included funding for recovery activities such as surveys for new locations, monitoring of known populations, population and ecological genetics studies, and collection and analysis of ecological and biological data. We have also been involved with the development of the Eggert's Sunflower Management Plan, Barrens Management Plan, and the Integrated Natural Resources Management Plan for Arnold Air Force Base in Tennessee. All of these plans address *H. eggertii* and its habitat (see discussion under Factor A). Recently we have signed an agreement with the Kentucky Transportation Cabinet to protect and manage a *H. eggertii* site in Hart County, Kentucky. We have evaluated potential impacts to this species from 248 Federal actions. The majority of these actions are highway and pipeline projects. We have conducted two formal consultations; one resulted in a "no effect" to the

species finding and the other a "not likely to jeopardize the continued existence" of the species finding. No plants were adversely affected by either project.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our determination that designation of critical habitat for *Helianthus eggertii* was not prudent (*Southern Appalachian Biodiversity Project* v. *United States Fish and Wildlife Service, Norton & Williams* (CN 2:00–CV–361 (E.D. TN)). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determination and submit a new prudency determination for *H. eggertii* no later than December 29, 2003. On January 8, 2004, the court extended the submission date to not later than March 30, 2004. Accordingly, we are including a new prudency determination in this proposal to delist *H. eggertii*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the Federal List of Endangered and Threatened Wildlife and Plants. These five factors and their application to *Helianthus eggertii* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1997, when *Helianthus eggertii* was listed as threatened, most of the 34 known sites of this species were thought to be threatened with destruction or modification of their habitat. It was estimated that over 50 percent of the known sites were threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants that produce shade and compete with this species for limited water and nutrients. Active management was listed as a requirement to ensure the plant's continued survival at all sites. Since most of the sites where this species survives are not natural barrens, but areas such as rights-of-way or similar habitats that mimic barrens, direct destruction of this habitat for commercial, residential, or industrial development or intensive rights-of-way maintenance (*e.g.*, herbicide use) was thought to be a significant threat to the known sites at the time of listing.

Overall, the activities affecting the species' habitat, such as encroachment of more competitive vegetation, direct destruction of habitat for commercial and residential development, intensive rights-of-way maintenance, and conversion of barrens habitat to croplands, pasture, or development, appear to have changed very little since listing. However, the risk those threats pose for *Helianthus eggertii*'s survival and conservation are considerably less than what was understood at the time of listing. *H. eggertii* appears to respond favorably to disturbance. One site that occurs in Coffee County, Tennessee, was known to have hundreds of stems in 1998 before the site was clearcut. In 2000, Tennessee Department of Environment and Conservation (TDEC) found that there were very few plants left and it was thought that the logging had resulted in the destruction of the plants at this site. However, in 2003, we found that the site had 1,578 total stems, including 951 flowering stems. Logging had only a temporary negative effect and the resulting land disturbance resulted in greatly increasing the size and vigor of the plants at this site (USFWS, unpublished data 2003). This same event has occurred on the Arnold Air Force Base in Coffee County. Pine stands that had few to no *H. eggertii* had been clearcut, followed by either the new appearance of *H. eggertii* or a significant increase in size and vigor of existing plants (K. Fitch, pers. comm. 2003). Many of the known *H. eggertii* sites occur along road and power line rights-of-way. This is probably due to the disturbance of these areas from continual maintenance activities. While plants will not grow and flower well in very deep shade (*i.e.*, 80 percent), the moderate levels of shade (from 40 to 60 percent) where *H. eggertii* normally occurs do not appear to have large negative consequences for its growth or reproduction (Cruzan 2002). Cruzan (2002) also found that *H. eggertii* competes well against other more widespread species under full sunlight and 60 percent shade conditions, a fact that was not known at the time of listing.

At the time of listing, we did not fully understand that *Helianthus eggertii* could readily adapt to utilizing manmade disturbances to replace the dwindling natural barrens. We originally thought the species was restricted to these natural barren areas. When *H. eggertii* was listed, manmade areas were thought to be low-quality sites where the species was making a last ditch effort to survive. Upon discovering that manmade sites were a significant habitat *H. eggertii* was exploiting and in which it was thriving, we began finding a significant number of new sites. In fact, since listing, an additional 245 sites have been found that contain the species (Alabama Natural Heritage Database 2003; Kentucky Natural Heritage Database 2003; Tennessee Natural Heritage Database 2003; USFWS unpublished data 2003). The species is also more widespread than originally thought, occurring in 2 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. The number of stems has also increased dramatically from the time of listing. In Alabama, the one site known at the time of listing was described as vigorous; presently, there are three sites and all three have more than 100 stems (Alabama Natural Heritage Database 2003). In Kentucky, most of the 13 original sites at the time of listing contained fewer than 15 stems and 4 sites had fewer than 5 stems. Presently in Kentucky, there are 33 known sites; 13 of these sites have more than 100 stems, and are now considered viable populations (Kentucky Natural Heritage Database 2003). In Tennessee, about one-half of the 20 original sites at the time of listing contained fewer than 20 stems. Currently in Tennessee, there are 243 known sites, 63 of which have more than 100 stems and are now considered viable populations (Tennessee Natural Heritage Database 2003; USFWS unpublished data 2003).

Of the 279 sites where *Helianthus eggertii* is known to occur in Alabama, Kentucky, and Tennessee, 126 (which make up 27 total populations) are in public ownership or on land owned by TNC and are being managed to protect the species. Protection for the species will continue on these sites even if it is delisted. Arnold Engineering and Development Center (AEDC), operated by the U.S. Air Force, has 115 of these sites (11 populations) and is the largest Federal landowner harboring this species. *H. eggertii* is covered by AEDC's Integrated Natural Resources Management Plan (INRMP), a Barrens Management Plan (BMP), and a separate Eggert's Sunflower Management Plan (ESMP). The INRMP, BMP, and ESMP are active management plans that provide for the long-term conservation of this species by focusing on restoring barrens habitat and maintaining the necessary ecological processes in habitats the species requires. These processes include various silvicultural treatments (*e.g.*, clearcuts, marked thinning, and row thinning), prescribed burning, and invasive pest plant management (*e.g.*, manual removal and herbicide spot application). Regardless of the Federal status of *H. eggertii*, the BMP, ESMP, and INRMP will continue

to provide for the protection and management of this species (U.S. Air Force (USAF) 2001, USAF 2002). In Kentucky, Mammoth Cave National Park (MCNP) has three populations and there is one population on U.S. Army Corps of Engineers property at Nolin Lake. MCNP is actively managing *H. eggertii* populations and has implemented a prescribed burning regime to provide for the long-term protection of this species. We have recently signed a Cooperative Management Agreement with MCNP to provide long-term protection of the three *H. eggertii* populations occurring on Park property. These populations and the barrens habitats on which they occur will be sustained by implementing habitat management activities, such as prescribed burns, tree thinning, and invasive plant removal, and monitoring the plants and their habitat. We also have draft Cooperative Management Agreements being reviewed by AEDC and the U.S. Army Corps of Engineers. We believe that these agreements will be signed before this proposed rule is finalized, within a year. These agreements, like the MCNP agreement, will provide for the long-term protection of *H. eggertii* populations by implementing the above-listed habitat management activities. These agreements will aid in sustaining these populations on these Federal lands regardless of the Federal status of this species.

Helianthus eggertii is an early successional stage species and, while historic barrens habitat is becoming increasingly rare, this species readily responds to barrens restoration activities as well as colonizing manmade disturbed areas. The key to long-term survival of *H. eggertii* is periodic burning, mowing, or thinning of the competing vegetation. Kentucky Transportation Cabinet has signed a management agreement with us to maintain, enhance, and monitor *H. eggertii* on its property (41 acres, one population) which includes restoring barrens habitat by thinning the existing trees near *H. eggertii* occurrences, conducting periodic prescribed burns, and monitoring the success of these management practices to refine them if necessary. The management agreement is in effect until 2010 delete previous place.

The Alabama and Tennessee State Departments of Transportation are working with us to develop and maintain roadside mowing regimes that would benefit existing *Helianthus eggertii* sites. This will also encourage new establishment of plants along road rights-of-way by reducing the competing vegetation and keeping the areas open. The Tennessee Wildlife Resources Agency (TWRA), which owns four wildlife management areas that contain seven *H. eggertii* populations, is managing these areas for small game, which indirectly benefits this species by keeping the area in early successional vegetation. We have drafted a management agreement with TWRA that would provide for the protection of this species on its lands for an initial period of 10 years. This agreement is in the process of being signed and, like the Federal agreements, will involve habitat management activities such as prescribed burns, tree thinning, and invasive plant removal, and monitoring the plants and their habitat to ensure the protection and management of these sites regardless of the Federal status of *H. eggertii*. Similarly, we have drafted a management agreement with the City of Nashville, Metro Parks and Recreation, which owns and operates Beaman Park in Davidson County, Tennessee. Beaman Park contains two populations of *H. eggertii*. This park is new and plans are being developed for future uses such as hiking trails, picnic areas, park headquarters, and maintenance buildings. We are working with Metro Parks to ensure that the existing *H. eggertii* populations are protected. The draft agreement will be signed before this proposed rule is finalized (within one year), and will include the above-listed habitat management activities.

TNC in Kentucky owns a site known as Baumberger Barrens, which contains one population of *Helianthus eggertii*. TNC has an existing management plan for the barrens that includes *H. eggertii*. The site is undergoing management, such as removal of woody species, periodic prescribed burns, and invasive plant removal, to ensure the native barrens species, including *H. eggertii*, are maintained and protected. It is our understanding that this site will be protected in perpetuity by TNC of Kentucky for the people of Kentucky.

TNC of Kentucky and the State of Kentucky each own 50 percent in a site known as Eastview Barrens. One population of *Helianthus eggertii* occurs at the Eastview Barrens. These two landowners are working together to manage the barrens on this site by removing woody species, conducting periodic prescribed burns, and preventing and removing invasive plants to ensure the native barrens species, including *H. eggertii*, are maintained and protected. This site will be protected in perpetuity by TNC of Kentucky and the State of Kentucky for the people of Kentucky.

The large increase in new *Helianthus eggertii* sites (245) since listing, the increased understanding of the plant's adaptability, and the protection and management provided by State and Federal landowners have led us to conclude that the threats to *H. eggertii*'s habitat have been adequately addressed and habitat destruction is no longer considered to be a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We have no documented evidence, records, or information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to *Helianthus eggertii*. We have found no records of unauthorized collection during our literature review or in discussions with researchers. This species is not believed to be a significant component of the commercial trade in native plants, and overutilization does not constitute a threat for this species.

C. *Disease or predation.* Disease has been observed by the Service and other observers on small numbers of *Helianthus eggertii* plants (T. Gulya, pers comm. 2004). This disease is believed to be a rust fungi of either the Puccinia or Coleosporium genus (T. Gulya, pers comm. 2004). This rust attacks the vegetation and leaves orange-to-brown pustules (raised bumps or areas) on the surfaces. It does not appear to kill the plants, and we do not believe that it is a threat to the species' existence. Predation from insects and herbivores has also been noted on small isolated patches of H. eggertii. These incidents appear to result from normal environmental conditions. Because of the ability of this plant to sprout stems from rhizomes, the small amount of predation observed does not pose a threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* The Act does not provide protection for plants on private property unless the landowner's activity is federally funded or requires Federal approval. In all three States (Alabama, Kentucky, and Tennessee), plants have no direct protection under State law on private property. Plants on private property are afforded ancillary protection under State criminal trespass laws. If this proposed delisting rule is finalized, the only change to the protection of *Helianthus eggertii* on private land would be that we would no longer consult under section 7 of the Act for the activities that are federally funded or require Federal approval. However, there are enough populations of *H. eggertii* on public lands (27 populations) to afford the long-term

conservation of this species based on the recovery criteria (20 populations) in the Recovery Plan. The recovery criteria called for the 20 populations to be distributed throughout the species' historical range and, based on the number and distribution of populations known at that time, determined that the relative proportions would be one population in Alabama, three populations in Kentucky, and 16 populations in Tennessee. Although none of the three populations in Alabama are currently under a management plan, we believe that the current distribution of populations under such plans meets the intent of the recovery criteria because they are "distributed throughout the species" historical range," including populations that occurred near the Tennessee/Alabama border.

Section 9(a)(2)(B) of the Act prohibits removal and possession of endangered plants from areas under Federal jurisdiction. Kentucky has 4 populations and Tennessee has 11 populations that occur on Federal lands. None of the three populations in Alabama occurs on Federal lands. *Helianthus eggertii* sites on MCNP in Kentucky are also protected from take by Code of Federal Regulations, Title 36, Volume 1, which protects all plants on Department of Interior lands. We have a cooperative management agreement with the Mammoth Cave National Park and we anticipate having signed agreements with the remaining Federal landowners before this rule is finalized, within one year. These agreements would protect *Helianthus eggertii* and its habitat for a period of 10 years, regardless of the Federal status of the species. Both the plant and its habitat would be protected, managed, and monitored under these agreements.

On public lands in Tennessee and Kentucky, on which 27 populations (composed of 126 of the 279 known sites, and including the 15 populations on Federal lands just discussed) of the plants are found, *Helianthus eggertii* is adequately protected by other laws. Air Force Instruction 32–7064 at 7.1.1 provides the same protection for candidate and State listed species as for federally listed species "when practical" on AEDC. It is our understanding that the State of Tennessee has no plans to delist *H. eggertii* in the immediate future. In addition, as mentioned previously, *H. eggertii* is covered under 3 management plans covering AEDC (INRMP, Barrens Management Plan and Eggert's Sunflower Management Plan), all of which will continue for some years regardless of whether the species is delisted. The TWRA has a rule (1660–1–14–.14) that protects all vegetation on designated wildlife management areas from take regardless of its State or Federal status. There are 10 known populations of *H. eggertii* that occur on State-owned public lands in Tennessee; 5 of these populations occur on 4 different State wildlife management areas managed by the TWRA. On public lands in Alabama and Kentucky, every natural component is considered public domain and is, therefore, protected from take under State law. Alabama has one population and Kentucky has three populations of *H. eggertii* that occur on State-owned public lands. These State laws will remain in effect regardless of whether this species remains federally listed or not.

The ESA protects plants on private lands only if the actions which might adversely impacted them are conducted, permitted or funded by a Federal agency, or constitute criminal trespass or theft of the plants. The limited protection afforded by the Act under these circumstances would be lost through delisting, and other existing regulations did not provide complete protection to all existing habitat on private lands. However, we believe the significant protections afforded to the 27 populations occurring on public lands are adequate to ensure those populations of *H. eggertii* remain viable, and such populations by themselves meet or exceed the recovery goals listed in the recovery plan.

E. *Other natural or manmade factors affecting its continued existence.* Extended drought conditions and an increase in the potential for inbreeding depression due to dwindling numbers were thought to affect the continued existence of *H. eggertii* at the time of listing. The known sites of *H. eggertii* have now increased in number to 279 (68 populations) and are scattered throughout 26 counties in three States. This makes the likelihood of a drought adversely affecting all the known sites much less than originally thought, when there were only 34 known sites. Also, there are three populations in Alabama, 18 populations in Kentucky, and 47 populations in Tennessee, for a total of 68 populations, that have more than 100 flowering stems. The Recovery Plan criterion requires only 20 populations to be considered for delisting. Cruzan (2002) suggested that 100 flowering stems or more were needed to maintain genetic diversity and prevent inbreeding depression within a population. Inbreeding depression due to low numbers of individuals per population is no longer a threat to *H. eggertii*. We believe the known number of sites, the numbers of existing populations, and their distribution are sufficient to protect against potential catastrophic events (*e.g.*, drought) and no longer consider such events to be a threat to this species. There are no other natural or manmade factors known to affect the continued existence of *H. eggertii;* therefore, we do not believe these factors will affect the continued existence of this species.

Summary of Findings

According to 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data for classification of the species. The "error in the original data" category for delisting a species has been further subdivided by the Service to more specifically identify the "error" as follows—(1) better data (foreign, scientific, or commercial information), (2) scientific (taxonomic) revision of the listing basis (subsequent to listing), (3) amendment to the Act (the scope of listing under section 4), and (4) additional discoveries of previously unknown populations and/or habitats (USFWS 1999b).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Helianthus eggertii*. Based on 2001, 2002, and 2003 surveys, we conclude that the threatened designation no longer correctly reflects the current status of this plant. Relative to the information available at the time of listing, recovery actions have resulted in new information that shows a significant (1) expansion in the species' known range, (2) increase in the number of known sites, and (3) increase in the number of individual plants. Furthermore, recovery efforts have provided increased attention and focus on this species. This in turn has led to greater protection for the species such that the recovery criteria in the Recovery Plan for this species are expected to be entirely met in the next year, prior to finalizing this proposed rule. After conducting a review of the species' status, we have determined that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the increased knowledge of the genetics of this species, and the protection offered by State and Federal landowners, we

conclude, based on the best scientific and commercial information, that *H. eggertii* does not warrant the protection of the Act. Therefore, we propose to remove *H. eggertii* from the List of Endangered and Threatened Plants.

Prudency Determination

Because of the current status of the species throughout its range and the number of sites that are located on Federal, State, and private conservation areas, we are proposing to remove *Helianthus eggertii* from the List of Endangered and Threatened Wildlife and Plants under the Endangered Species Act. We believe that the threatened designation no longer correctly reflects the current status of this plant. We have not yet made a final determination on the delisting proposal. Therefore, the species remains listed, and the Act requires us to designate critical habitat for the species, if designation would be prudent. The facts and analysis described in the proposed rule above, however, are highly relevant to the question of what areas may constitute critical habitat for the species. In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Under the Act, "conservation" is a technical term, defined as the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. In the case of *H. eggertii*, no methods or procedures are required to bring the species to the point where listing is no longer necessary to the conservation of the species. Recovery actions have secured a number of populations and identified additional populations not previously known. The species is more widespread and abundant than was documented at the time of listing. The species habitat also does not require any "special management considerations or protection" because we believe the species habitat is being appropriately managed and protected by State, Federal, and county land managers. The species is more resilient and less vulnerable to certain activities than previously thought, and is now protected on Federal, State, and county lands. The large increase in new sites, increased understanding of the plant's adaptability, and the protection and management provided by State and Federal landowners have led us to conclude that habitat destruction is no longer considered a threat to the species. Moreover, because of the significant protections afforded by the 27 populations of *H. eggertii* occurring on public lands, we believe that the protection provided by existing regulations are adequate to maintain habitat of sufficient quantity and quality to ensure viable populations and meet recovery goals listed in the recovery plan. Thus, there are no areas that constitute critical habitat for the species. If there is no critical habitat to be designated, designation would not be beneficial to the species. Designation of critical habitat is, therefore, not prudent.

Effect of This Rule

This rule, if made final, would revise 50 CFR 17.12(h) to remove *Helianthus eggertii* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.96.

If this species is removed from the List of Endangered and Threatened Plants, Endangered Species Act protection would no longer apply. Removal of *Helianthus eggertii* from the List of Endangered and Threatened Plants would relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

The 1988 amendments to the Act require that all species that have been delisted due to recovery efforts be monitored for at least five years following delisting. The Federal, State, and private conservation group landowners involved in recovery activities for this species are already monitoring the status of this species, either through existing agreements or voluntarily. The Kentucky Transportation Cabinet has signed a management agreement with us, covering one population in Kentucky, to protect this species and monitor its status for a period of seven years. We have draft agreements with the TWRA and the Arnold Air Force Base, covering 16 populations in Tennessee. These landowners will protect these populations and monitor their status for a period of 10 years. We anticipate that these agreements will be finalized before this proposed delisting rule would become final, within one year. Furthermore, we will be working with the Federal and State landowners and TNC to develop a post-delisting monitoring plan. This plan will be drafted, released for comment, and finalized on schedule with the final delisting.

Peer Review

Under our 1994 peer review policy (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population structure, and supportive biological and ecological information on this proposed rule. The purpose of such review is to ensure that we base listing decisions on scientifically sound data, assumptions, and analysis. To that end, we will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior,

Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email comments to—*Exsec@ios.doi.gov*.

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Author

The primary author of this proposed rule is Timothy Merritt (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12—[Amended]

2. Amend § 17.12(h) by removing the entry "*Helianthus eggertii*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Wildlife and Plants.

Dated: March 30, 2004.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–7547 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout (*Salvelinus confluentus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical habitat for the Klamath River and Columbia River populations of bull trout (*Salvelinus confluentus*), and the availability of the draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until May 5, 2004.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 503/231–6243; or

3. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit you comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6194; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (November 29, 2002, 67 FR 71235) and on our draft economic analysis of the proposed designation. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding any particular area as critical habitat outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of bull trout and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families beyond those identified in section 4.3 (Potential Impacts on Small Entities);

(5) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs are overlooked;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(9) Whether the economic analysis correctly assesses the effect on regional

costs associated with land use controls that derive from the designation;

(10) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Are data available on costs to the Bonneville Power Administration associated with the listing of the bull trout and the designation of critical habitat for the species in the Columbia River basin beyond foregone power revenues of $2–$4 million per year, possible future facility modifications totaling $1.1–$1.3 million per year, and the costs of $266–$366 thousand per year attributable to fish studies;

(12) Are data available related to costs associated with timber harvesting activities beyond the consultation costs and the estimated $1.64–$4.14 million per year relative to project modifications to U.S. Forest Service timber harvest activities;

(13) Is it an appropriate assumption that the analysis assumes that even though there are many consultations that address the bull trout, very few project modifications will result from these consultations beyond those identified for U.S. Forest Service timber harvest activities, Federal Columbia River Power System operations, grazing activity on BLM and Forest Service lands, U.S. Army Corps of Engineers construction and maintenance activities, Bureau of Reclamation activities, Federal Highway Administration bridge construction and maintenance activities, and Federal Energy Regulatory Commission activities;

(14) Is it appropriate that the analysis does not include the cost of project modifications to projects that are the result of informal consultation;

(15) Whether the analysis adequately captures and values various costs to water and power producing facilities and capabilities;

(16) Is it appropriate that the analysis used the life of the project to amortize the costs of fishery modification requirements rather than the revenue period;

(17) Are the determinations in Section 3.4 (Projected Future Section 7 Consultations Involving Bull Trout) appropriate to address the economic impacts associated with residential and commercial development;

(18) Is it appropriate that the analysis does not identify or discuss potential effects of the designation on employment beyond those implied by information contained in section 3.1.4 (Distributional and Regional Economic Effects) and section 4.3 (Potential Impacts on Small Entities);

(19) In our analysis we indicate that several factors potentially introduce uncertainty into the results of the analysis, and that we solicit from the public further information on any of these issues, specifically:

(a) are the data available to develop more accurate estimates of the number of future consultations, project modifications, and costs for the activities related to private lands;

(b) are the data available on additional land use practices, or current or planned activities in proposed critical habitat areas, that are not specifically or adequately addressed in this analysis;

(c) are the data available on additional indirect impacts (such as additional regulatory burdens from State or local laws triggered by the designation of critical habitat) that are not specifically or adequately addressed in this analysis;

(20) In our original listing document, we stated that protections afforded bull trout from existing Federal, State, or local laws provided inadequate levels of protection to prevent past and ongoing habitat degradation from negatively affecting bull trout. This analysis, however, states that some of the protections flowing from the designation of critical habitat already exist in the form of other Federal and State laws that generally protect various aspects of the environment. Should these costs identified as "baseline" and not calculated into the costs of critical habitat designation be included in the cost of the critical habitat designation and if so what data are available to identify those costs; and

(21) The economic analysis should identify all costs related to the designation of critical habitat for the bull trout which was intended to take place at the time the species was listed. As a result, the assumption is the economic analysis should be consistent with the Service's listing regulations. Does this analysis achieve that consistency?

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–AI52" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, *please contact the* Bull Trout Coordinator, (*see* **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in the U.S. Fish and Wildlife Service Office at the above address.

Copies of the draft economic analysis are available on the Internet at http://www.r1.fws.gov or from the Bull Trout Coordinator at the address and contact numbers above. You may obtain copies of the proposed rule from the above address, by calling 503/231–6194, or from our Web site at: *http://pacific.fws.gov/bulltrout.*

Background

We published a proposed rule to designate critical habitat for the Klamath River and Columbia River populations of bull trout (*Salvelinus confluentus*) on November 29, 2002 (67 FR 71235). The proposed critical habitat designation includes approximately 29,720 kilometers (18,471 miles) of streams and 215,585 hectares (532,721 acres) of lakes, reservoirs, and marshes in Oregon, Washington, Idaho, and Montana. Under the terms of a court-approved settlement agreement, we are required to submit the final rule designating critical habitat to the **Federal Register** no later than September 21, 2004.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), with regard to actions carried out,

funded, or authorized by a Federal agency.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Klamath River and Columbia River populations of bull trout, we have prepared a draft economic analysis of the proposed critical habitat designation. The economic analysis of this proposed designation of critical habitat suggests that the estimated total potential economic costs of the designation may range from $20.4 million to 31.3 million over a 10-year period, with administrative costs for consultations under section 7 of the Act expected to be approximately $9.6 million annually, and the estimated total project modification costs attributable to section 7 estimated to range from $10.8 to $21.7 million per year. The draft analysis is available on the Internet and from the mailing address in the **ADDRESSES** section above.

Author

The primary author of this notice is Barbara Behan, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7548 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 65
Monday, April 5, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on February 13, 2004, by a group of shrimp producers in Arizona. Shrimpers in Arizona are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the price of shrimp in Arizona by 32.3 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers certified as eligible for TAA may apply to the Farm Service Agency for benefits through (June 22, 2004). After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified As Eligible For TAA, Contact: Farm Service Agency service centers in Arizona.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 31, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7765 Filed 4–2–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by the National Alfalfa Alliance, representing non-certified (common) alfalfa seed producers in the states of California, Colorado, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that alfalfa seed prices did not decline by more than 20 percent during the January–December 2002 marketing year, compared to the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.assistance@fas.usda.gov.*

Dated: March 31, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7763 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by the North Carolina Fisheries Association. The association represents North Carolina shrimpers. Shrimpers in North Carolina are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in North Carolina by 23.8 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers certified as eligible for TAA may apply to the Farm Service Agency for benefits through June 28, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Cooperative State Research, Education, and Extension Service (CSREES) at no cost and may receive adjustment assistance payments, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for general information.

Producers Certified As Eligible For TAA, Contact: Farm Service Agency service centers in North Carolina.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email:*trade.adjustment@fas.usda.gov.*

Dated: April 1, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7761 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by a group of apple

producers in Rappahannock County, Virginia.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that processing apple prices did not decline by more than 20 percent during the July 2002–June 2003 marketing year from the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.assistance@fas.usda.gov.*

Dated: March 31, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7762 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by the Southeastern Fisheries Association. Florida shrimpers are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the price of shrimp in Florida by 24.5 percent during January 2003 through December 2003, when compared with the previous 5-year average.

Shrimpers certified as eligible for TAA may apply to the Farm Service Agency for benefits through (June 28, 2004). After submitting completed applications, producers shall receive technical assistance provided by the Cooperative State Research, Education, and Extension Service (CSREES) at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified As Eligible For TAA, Contact: Farm Service Agency service centers in Florida.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: March 31, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7766 Filed 5–2–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by the Tropical Fruit Growers of South Florida, Inc., representing fresh longan producers from Florida.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that during the period 1998 to 2003, no imports of fresh longans were reported. Since no imports were reported, the petition did not meet the criteria of increased imports from the previous year.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.assistance@fas.usda.gov.*

Dated: April 1, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7760 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on February 23, 2004, by the Tropical Fruit Growers of South Florida, Inc. Lychee producers in Florida are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of lychees contributed importantly to a decline in the prices of lychees in Florida by 61.0 percent during May 2003 through July 2003, when compared with the previous 5-year average.

Lychee producers certified as eligible for TAA may apply to the Farm Service Agency for benefits through June 28, 2004). After submitting completed applications, producers shall receive technical assistance provided by the Cooperative State Research, Edcuation, and Extension Service (CSREES) at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for general information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Florida.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: March 31, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–7764 Filed 4–2–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada City Range District, Tahoe National Forest, CA; Burlington Ridge Trails Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is proposing to modify the existing Burlington Ridge Trail system. These modifications include: Expanding some trails through new construction and joining up with user created trails; rerouting; realigning; and eliminating other trails in order to correct problems such as erosion, user conflicts, and potential natural and cultural resource degradation. This trail system currently includes approximately 18.5 miles of motorized and approximately 10.5 miles of non-motorized, single track, trails used by motorcyclists, hikers,

equestrians and mountain bicyclists. This Burlington Ridge Trails project area includes National Forest System lands along State Highway 20 from approximately one-quarter mile east of White Cloud to approximately the Lowell Hill Road and south approximately four miles. Volunteers have constructed and maintained most of the existing trails. Trails date back to the 1960s when motorcyclists and equestrians connected logging roads, skid trails, abandoned railroad grades and ditches to form loop routes. More routes evolved in the 1970s and in 1982 construction of the Pioneer Trail began on National Forest System land by the Gold Country Trails Council, an equestrian group. At this time the Forest Service became actively involved in managing the area's trails. These trails have since become popular with local mountain bicyclists.

DATES: Comments concerning the scope of the analysis must be received by April 19, 2004. The draft environmental impact statement is expected July 1, 2004 and the final environmental impact statement is expected August 15, 2004.

ADDRESSES: Send written comments to Jean M. Masquelier, District Ranger, 631 Coyote St., Nevada City, CA 95959. For further information, mail correspondence to Mary Furney, Assistant District Recreation Officer, Nevada City Ranger District, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959 or by sending electronic mail (e-mail) to *mfurney@fs.fed.us* or by fax to 530–478–6109 attention Mary Furney.

FOR FURTHER INFORMATION CONTACT: see address above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service proposes to modify existing trails and construct new sections of trails to promote: More environmentally sound trails by reducing erosion; greater stream protection; enhanced archeological site protection and provide safer trail experiences as well as a greater diversity of trail opportunities in this area. It will also continue to promote the demonstrated spirit of successful cooperation among user groups and the Forest Service and help to meet the identified increasing demand for single track, off highway vehicle trails experience.

The Sierra Nevada Forest Plan Amendment (SNFPA) Final Supplemental Environmental Impact Statement (FSEIS) Record of Decision (ROD) January 2004 states: "This decision reaffirms that providing recreation opportunities is one of the Forest Service's major missions in California along with providing sustainable, healthy ecosystems." It goes on to state, "Projected population growth in the United States and increasing tourism in this region, along with other factors, clearly contribute to increasing demand for recreation facilities and services throughout the Sierra Nevada national forests."

Proposed Action

The proposed action includes:

1. Rerouting approximately one quarter mile of trail on the Towle Mill Loop Trail which is located T17N, R10E sections 25 and 36 to reduce erosion caused by the current steepness of the trail. The proposed trail will be generally less than 12 percent grade, utilizing climbing turns across the contour rather than the existing straight, 40 percent grade, down and up trail. Most of the current trail will be closed off except where the rerouted trail crosses the current trail. Also on the Towle Mill Loop Trail in section 25, approximately one third of a mile of trail is proposed to be rerouted onto an old railroad grade. Further east on that trail, in section 25, it is proposed that another one third of a mile of trail is constructed paralleling the present one in order to separate motorized and non-motorized activity reducing potential conflicts between motorcyclists and equestrians thus increasing user safety.

2. Constructing approximately three quarters of a mile of trail along a ditch, further north, mostly in section 25 with about 100 yards extending into section 19. This new construction would extend the non-motorized Hallelujah Trail to Skillman Campground paralleling the 20–12 Road also known as the Burlington Ridge Road. Currently motorcyclists, mountain bicyclists and equestrians utilize this portion of road to access single track trails. This new trail would serve to separate use and would be non-motorized. It will help to keep motorcyclists from inadvertently crossing onto the non-motorized Hallelujah Trail reducing conflicts and increasing trail user safety.

3. Closing approximately one quarter mile of the Omega Trail, in section 29. The Omega Trail has already been rerouted near the Forest Road 32 and Highway 20 intersection south of the 32 Road to the Burlington Off Highway Vehicle Staging Area. This will help to reduce user conflicts by directing motorcyclists away from the non-motorized Pioneer Trail.

4. Rerouting five minor sections and constructing a new trail that essentially connects user created trails. Beginning in the southeast corner of section 29, off of the 32–2 Road, there is a user created motorized trail that extends east and north into section 28 and is approximately one and one half miles long. There are five very minor reroutes, each less than 100 feet long, proposed along this section of trail. These reroutes would direct trail users away from archeological sites and wet areas, reducing impacts to these sensitive areas. It is proposed to extend this trail through the lower portion of section 28 and extending into section 27, then joinging up with another one half mile long user created trail that is just south of Highway 20 in sections 22 and 21. The entire length of the new construction joinging up the user-created trail portions is approximately five miles. The total trail length including the user created sections and the new construction is approximately seven miles. This new construction would replace an unauthorized trail that traverses from Forest Service land through private land that is currently used to make a loop route back on to Forest Service land.

Existing system trails are generally no more than two feet wide and natural features are generally left as they are with the trail winding around them. This adds to the unique experience of this area, enhances trail users's skills and helps to keep the speeds down of motorcyclists, mountain bicyclists, and equestrians. All of the proposed reroutes and new construction would be in keeping with the character of the existing trails.

Possible Alternatives

Alternatives being considered at this time include: (1) Proposed actions; (2) no action alternative; and (3) implement only the reroutes and closures, with no new construction.

Responsible Official

Jean M. Masquelier, District Ranger, 631 Coyote St., Nevada City, CA 95959.

Nature of Decision To Be Made

The decision to be made is whether to approve the Proposed Action, which would: Provide for trail construction, trail reconstruction, and trail closures; or provide for trail reconstruction and closure only; or do nothing to the current system.

Scoping Process

Public participation is viewed as an integral part of the environmental analysis. The Forest Service will be seeking points of dispute, debate, or disagreement from Federal, State, and

local governmental agencies as well as from individuals or organizations that may be potentially interested or affected by the proposed action. A scoping letter will be mailed to persons who have expressed interest in the proposed action based on notification in the Tahoe National Forest Quarterly Schedule of Proposed Actions and by notification through a published legal notice in the *Union* newspaper, Grass Valley, CA and in the *Journal* newspaper, Auburn, CA.

This project was originally published in the Tahoe National Forest's quarterly *Schedule of Proposed Actions* (SOPA) in October of 2000. Scoping for trail projects have occurred in this general area since 1998 with Forest Service personnel attending meetings of constituent groups and otherwise meeting with group members.

Preliminary Issues

Noise and emissions from motorcycles and equipment used to construct new proposed trail segments may affect California Spotted Owl (CSO) since the project area includes protected activity centers (PACs), home range core areas (HRCAs), suitable CSO habitat and Old Forest Emphasis allocations. In addition other wildlife species may be affected as well. Are there significant impacts to wildlife and habitat caused by construction of trails and use by motorized and non-motorized trail users? Will trail construction and use increase erosion, pollution, and sedimentation of waterways? Should motorized trail activity be allowed to continue in Old Forest Emphasis allocations?

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments submitted during the scoping process should be in writing or e-mail, and should be specific to the proposed action. The comments should describe as clearly and completely as possible any points of dispute, debate, or disagreement the commenter has with the proposal. Once scoping letters are received, the District shall identify all potential issues, eliminate non-significant issues or those covered by another environmental analysis, identify issues to analyze in depth, develop additional alternatives to address those significant issues, and identify potential environmental effects of the proposed action as well as all fully analyzed alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in July 2004. EPA will publish a notice of availability of the draft EIS in the **Federal Register** at that time. The comment period on the draft EIS will extend for 45 days from the date the EPA notice appears in the **Federal Register.** At that time, copies of the draft EIS will be mailed to potentially interested and affected agencies, organizations, and individuals for their review and comment and to those who provided comment during the scoping period. It is very important that those interested in the Burlington Ridge Trails Project participate by providing comment at that time.

The final EIS would be completed in August 2004. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS, as well as applicable laws, regulations, and policies considered in making the decision regarding this proposal.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the two week comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: March 30, 2004.

Steven T. Eubanks,

Forest Supervisor, Tahoe National Forest.

[FR Doc. 04–7566 Filed 4–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Annual Survey of Manufactures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 4, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mendel D. Gayle, Census Bureau, Room 2108, Building 4, Washington, DC 20233, (301) 763–4769 or via the Internet at *mendel.d.gayle@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau has conducted the Annual Survey of Manufactures (ASM) since 1949 to provide key measures of manufacturing activity during intercensal periods. In census years ending in "2" and "7", we mail and collect the ASM as part of the Economic Census covering the Manufacturing Sector. This survey is an integral part of the Government's statistical program. The ASM furnishes up-to-date estimates of employment and payrolls, hours and wages of production workers, value added by manufacture, cost of materials, value of shipments by product class, inventories, and expenditures for both plant and equipment and structures. The survey provides data for most of these items for each of the 5-digit and selected 6-digit industries as defined in the North American Industry Classification System (NAICS). It also provides geographic data by state at a more aggregated industry level.

The survey also provides valuable information to private companies, research organizations, and trade associations. Industry makes extensive use of the annual figures on product class shipments at the U.S. level in its market analysis, product planning, and investment planning. The ASM data are used to benchmark and reconcile monthly and quarterly data on manufacturing production and inventories.

This ASM clearance request will be for the years 2004 to 2006. There will be no changes to the information requested from respondents.

II. Method of Collection

The ASM statistics are based on a survey that includes both a mail and a nonmail components. Previously, the mail portion of the survey was comprised of a probability sample of approximately 55,000 manufacturing establishments from a frame of approximately 225,000 establishments. These 225,000 establishments were all manufacturing establishments of multiunit companies (companies with operations at more than one location) and all single-location manufacturing companies that were mailed in the 1997 Census of Manufacturing. The nonmail component was comprised of the remaining small single-location companies; approximately 155,000 companies. No data has been collected from companies in the nonmail component. Rather, data has been directly obtained from the administrative records of the Internal Revenue Service (IRS), the Social Security Administration (SSA), and the Bureau of Labor Statistics (BLS). Although the nonmail companies account for over half of the population, they have accounted for less than 2 percent of the manufacturing output.

For the 2004–06 cycles of the ASM, we are researching options to expand the use of administrative record data and reduce the reporting burden on medium size single location companies by significantly expanding the scope of the nonmail component. This spring, we will be developing comparisons between administrative record data and the reported data in the 2002 Economic Census Covering the Manufacturing Sector. Based on these comparisons, we hope to expand the nonmail component to include approximately 200,000 single-unit companies. Currently, we are developing criteria to assist in this determination.

For the 2004–06 ASM's, we will continue to have a mail component of approximately 55,000 establishments from a significantly smaller sample frame. This will allow us to improve the overall quality of the survey estimates and allow us to better direct the sample towards specific tabulation cells that are difficult to estimate due to their size. The relative importance of the nonmail will increase; however, we do not expect the nonmail component to account for more than 10 percent of the survey estimates.

III. Data

OMB Number: 0607–0449.
Form Number: MA–10000(L), MA–10000(S).
Type of Review: Regular Review.
Affected Public: Businesses or other for profit, non-profit Institutions, small businesses or organizations, and State or Local Governments.
Estimated Number of Respondents: 55,000.
Estimated Time Per Response: 3.4 hours.
Estimated Total Annual Burden Hours: 187,000.
Estimated Total Annual Cost: The estimated cost to the respondents is $4,885,410.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 30, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–7549 Filed 4–2–04; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Questionnaire Pretesting Research

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 4, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Theresa J. DeMaio, U. S. Census Bureau, Room 3127, FOB 4, Washington, DC 20233–9150, (301) 457–4894 (or via the Internet at *theresa.j.demaio@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the current OMB approval to conduct a variety of small-scale questionnaire pretesting activities under this generic clearance. A block of

hours will be dedicated to these activities for each of the next three years. OMB will be informed in writing of the purpose and scope of each of these activities, as well as the time frame and the number of burden hours used. The number of hours used will not exceed the number set aside for this purpose.

This research program will be used by the Census Bureau and survey sponsors to improve questionnaires and procedures, reduce respondent burden, and ultimately increase the quality of data collected in the Census Bureau censuses and surveys. The clearance will be used to conduct pretesting of decennial, demographic, and economic census and survey questionnaires prior to fielding them. Pretesting activities will involve one of the following methods for identifying measurement problems with the questionnaire or survey procedure: cognitive interviews, focus groups, respondent debriefing, behavior coding of respondent/interviewer interaction, and split panel tests.

II. Method of Collection

Any of the following methods may be used: mail, telephone, face-to-face; paper-and-pencil, CATI, CAPI, Internet, or IVR.

III. Data

OMB Number: 0607–0725.
Form Number: Various.
Type of Review: Regular.
Affected Public: Individuals or Households, Farms, Business or other for-profit.
Estimated Number of Respondents: 5,500.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 5,500.
Estimated Total Annual Cost: There is no cost to respondents, except for their time to complete the questionnaire.
Respondent's Obligation: Voluntary.

Legal Authority: 13 U.S.C. 131, 141, 142, 161, 181, 182, 193, and 301.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 30, 2004

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–7550 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1322]

Expansion of Foreign-Trade Zone 40; Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40-Site 3, to include the Brook Park Road Industrial Park (322 acres), within the Cleveland Customs port of entry area (FTZ Docket 44–03; filed 9/10/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 54202, 9/16/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40-Site 3 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 24th day of March 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–7528 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1323]

Extension of Authority for Foreign-Trade Zone 151-Site 2 Findlay, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Findlay/Hancock County Chamber of Commerce, grantee of Foreign-Trade Zone 151, submitted an application to the Board requesting an extension of authority for FTZ 151-Site 2 in Findlay, Ohio, within the Toledo Customs port of entry (FTZ Docket 13–2003; filed 3/5/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 12035, 3/13/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to extend FTZ 151–Site 2 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to a four-year time period (to March 31, 2008) that may be extended upon review by the Foreign-Trade Zones Board.

Signed at Washington, DC, this 24th day of March 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–7529 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Proposals to Facilitate the Use of Foreign-Trade Zones by Small and Medium-Sized Manufacturers

As part of the Department of Commerce's manufacturing initiative, the Foreign-Trade Zones (FTZ) Board (the Board) has analyzed foreign zone programs to determine whether there are features that the Board can implement in the U.S. FTZ program to enhance access and reduce the program's costs for small and medium-sized manufacturers, thereby helping to improve such companies' international competitiveness. Based on this analysis, the Board is inviting public comment on two proposals. The first proposal involves a procedural change whereby the Board would delegate authority to the Board's Executive Secretary for decision-making on certain requests for manufacturing authority. The second proposal includes enhancements to the Board's pre-application counseling procedures and application guidelines for small and medium-sized manufacturers.

The proposed delegation of authority would only authorize the Board's Executive Secretary to grant temporary or interim authority for zone manufacturing. Permanent authority would continue to require full Board review. The consideration of all proposals for temporary or interim manufacturing (T/IM) authority would take into account the Board's existing criteria for manufacturing (*see* 15 CFR 400.31(b)). Prior to making a decision on an application for T/IM authority, the Board's Executive Secretary would publish a **Federal Register** notice seeking public comment, and could also contact Department of Commerce industry specialists for an assessment of the application. The Board's Executive Secretary would retain the discretion to deny any T/IM application [1] if opposition or any other complicating issues or concerns arise.

Several threshold criteria would need to be met to qualify for consideration for T/IM authority [2]. T/IM applications would be limited to manufacturing operations within pre-existing FTZ space (*i.e.*, within the boundaries of FTZ sites already approved by the Board at the time of the T/IM application's submission to the Board), and proposals would need to be consistent with government policy and prior Board actions and (1) non-complex [3] in nature and clearly presenting no new, complex, or controversial issues or (2) for export only. T/IM authority could only be granted for a period of up to two years, although circumstances might lead the Board's Executive Secretary to impose a stricter time limit on a particular proposal. Finally, the Board's Executive Secretary and the FTZ Board would have the authority to revisit any approval of T/IM authority should it be warranted by policy considerations, including subsequent industry opposition or a determination that the activity results in a negative net economic effect for the United States.

The proposed enhancements to the pre-application process for small and medium-sized manufacturers include: (1) Expanded pre-application counseling by the FTZ Board staff; (2) availability of completed sample applications to help guide potential applicants; and (3) simplified guidelines/formats for small and medium-sized manufacturers applying to the FTZ Board to conduct non-complex activity.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482–0002. We also ask that parties submit the original of their comments to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-ZonesBoard, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for the receipt of public comments is April 30, 2004. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482–2862.

[1] In cases where T/IM authority is denied, or that are ineligible for T/IM consideration, the applicant may opt to request manufacturing authority through the FTZ Board's standard procedures (*i.e.*, evaluation of the proposal by the full Board).

[2] *See* footnote 1.

[3] Generally expressed in terms of the number of inverted tariffs (*i.e.*, instances of imported inputs with higher duty rates than the resulting finished products proposed for manufacturing under FTZ procedures). After consultations with stakeholders, the Board's Executive Secretary would publish guidelines clarifying the criteria for consideration of T/IM applications.

Dated: March 29, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–7530 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–009, A–428–803, A–580–805, A–588–812, A–570–802, and A–412–803

Industrial Nitrocellulose from France, Germany, Korea, Japan, the People's Republic of China, and the United Kingdom: Notice of Initiation of Changed Circumstances Reviews and Consideration of Revocation of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances reviews.

SUMMARY: On February 12, 2004, in accordance with 19 CFR 351.216(b), Wolff Cellulosics GmbH (Wolff), a German manufacturer of industrial nitrocellulose (INC), filed a request for a changed circumstances review of the antidumping duty order on INC from Germany. On March 9, 2004, the Valspar Corporation (Valspar), an importer of INC and an interested party in multiple proceedings, filed requests for changed circumstances reviews of the antidumping duty orders on INC from France, Germany, Korea, Japan, the People's Republic of China (PRC), and the United Kingdom (UK), as described below. In response to these requests, the Department of Commerce (the Department) is initiating changed circumstances reviews of the antidumping duty orders on INC from France, Germany, Korea, Japan, the PRC, and the UK.

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, Office of AD/CVD Enforcement 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1983, the Department published in the **Federal Register** the antidumping duty order on INC from France. *See* 48 FR 36303 (August 10, 1983). On July 10, 1990, the Department

published in the **Federal Register** the antidumping duty orders on INC from Germany, Korea, Japan, the PRC, and the UK. *See* 55 FR 28266–28271 (July 10, 1990).

On February 12, 2004, Wolff requested that the Department revoke the antidumping duty order on INC from Germany through a changed circumstances review. According to Wolff, revocation is warranted because there is no longer any producer of the domestic like product. Specifically, Wolff asserts that Green Tree Chemical Technologies, Inc. (Green Tree), the sole producer of the domestic like product, has ceased production and no longer maintains the capacity to produce INC. *See* Wolff's February 12, 2004, letter at Exhibits A and B.

On March 9, 2004, Valspar requested that the Department initiate a changed circumstances review and revoke the antidumping duty orders on INC from France, Germany, Korea, Japan, the PRC, and the UK. Valspar claims that in November 2003, without prior announcement, Green Tree closed its INC production facility. According to Valspar, the alleged cessation of production of the domestic like product by the sole U.S. producer inherently constitutes "lack of interest" by the domestic industry in the continuation of the antidumping duty orders. *See* Valspar's March 9, 2004, letter, Request for Initiation of Changed Circumstances Review Seeking Revocation of the Antidumping Duty Order on Industrial Nitrocellulose from France, at pages 1–2.

Scope of the Orders

The product covered by these orders are shipments of INC from France, Germany, Japan Korea, the PRC and the UK. INC is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent and is produced from the reaction of cellulose with nitric acid. INC is used as a film–former in coatings, lacquers, furniture finishes, and printing inks. The scope of the orders does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent. INC is currently classified under Harmonized Tariff Schedule (HTS) subheading 3912.20.00. The HTS item number is provided for convenience and customs purposes only. The written description above remains dispositive as to the scope of the product coverage.

Initiation of Changed Circumstances Reviews

Pursuant to sections 751(d) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review) if the Department determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in the continuance of an order. Section 751(b)(1) of the Act requires that a changed circumstances review be conducted upon receipt of a request for a review which shows changed circumstances sufficient to warrant a review. The Department's regulations at 19 CFR 351.222(g) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Given Wolff's and Valspar's assertions, we will consider whether there is interest in continuing the orders on the part of the U.S. industry.

Interested parties may submit comments which the Department will take into account in the preliminary results of these reviews. Parties who submit comments are requested to submit with the comments (i) a statement of the issues, and (ii) a brief summary of the arguments. The due date for filing any such comments is no later than 20 days after publication of this notice. Any rebuttals to those comments may be submitted not later than five days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303 and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303(f).

On February 19, 2004, the Department initiated, on similar grounds, a changed circumstances review of the antidumping order on INC from Brazil. *See Industrial Nitrocellulose From Brazil: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order*, 69 FR 8626 (February 25, 2004). Because these seven orders are affected by the same circumstances pertaining to the domestic industry, the Department plans to publish in the **Federal Register** a combined notice of preliminary results of changed circumstances reviews of the antidumping duty orders on INC from Brazil, France, Germany, Korea, Japan, the PRC, and the UK. In accordance with 19 CFR 351.221(c)(3)(I), the notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on these results. The Department will also issue its final results of reviews within 270 days of February 19, 2004, the date of initiation of the changed circumstances review of the antidumping duty order on INC from Brazil, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances reviews are underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue to be in force, unless and until it is modified pursuant to the final results of the changed circumstances reviews.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216, 351.221(B)(i), and 351.222.

Dated: March 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–7644 Filed 4–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip from India until July 30, 2004. This extension applies to the sole respondent in the case, Jindal Polyester Limited. The period of review is December 21, 2001, through June 30, 2003.

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or John Conniff, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4406 or (202) 482–1009, respectively.

Background

On August 22, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip from India, covering the period December 21, 2001 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750. The preliminary results of review are currently due no later than April 1, 2004.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. See Decision Memorandum from Thomas F. Futtner, Acting Office Director to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated concurrently with this notice, which is on file in the Central Records Unit, room B–099 of the Department's main building. The Department is therefore extending the time limit for the completion of the preliminary results by 120 days. We intend to issue the preliminary results no later than July 30, 2004.

This notice is published in accordance with section 751(a)(3)(A) of the Act.

Dated: March 22, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 04–7527 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–853]

Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Not Less Than Fair Value.

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that wax and wax/resin thermal transfer ribbons (TTR) are not being, nor are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Tariff Act).

Case History

The Department published the preliminary determination of sales at not less–than-fair–value on December 22, 2003. *See Notice of Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea*, 68 FR 71078 (December 22, 2003) (Preliminary Determination). Since then the following events have occurred.

On December 22, 2003 respondent Illinois Tool Works, Inc. (the only known producer/exporter of TTR from Korea to the United States (ITW)) submitted its response to the Department's November 28, 2003 supplemental questionnaire regarding the section E further manufacturing response of ITW's U.S. affiliate ITW Thermal Films (ITWTF). Also on December 22, 2003 ITW submitted its response to the Department's sections A, B, and C supplemental questionnaire, issued on December 1, 2003.

On December 23, 2003 DigiPrint International, a U.S. importer of TTR slit in India, submitted comments on substantial transformation and country of origin.These comments were made part of the TTR from Korea investigation as an attachment to a memorandum to the file dated January 9, 2004. *See* memorandum from Cheryl Werner to the file dated January 9, 2004 on file in room B–099 of the Department of Commerce building.

On January 5, 2004 ITW submitted its response to the Department's December 18, 2003 section D supplemental questionnaire. Also on January 5, 2004 the Department issued another section E supplemental questionnaire.

On January 5, 2004 and January 16, 2004, International Imaging Materials, Inc. (petitioner) submitted comments regarding (1) its allegation that respondents in the three concurrent investigations of TTR (France, Japan, and South Korea) would attempt to circumvent the order by slitting jumbo rolls in third countries, and (2) its request that the Department therefore determine that slitting does not change the country of origin of TTR for antidumping purposes.

On January 6, 2004 petitioner submitted comments on the upcoming cost of production (COP) verification.

On January 9, 2004 Armor S.A. (the sole respondent in the antidumping investigation of TTR from France) submitted a response to petitioner's January 5, 2004 comments on country of origin.

On January 12, 2004 ITW submitted its response to the Department's January 5, 2004 section E supplemental questionnaire.

From January 12 through January 16, 2004 Department officials verified the cost of production response of ITW Specialty Films Co., Ltd. (ITWSFK) in Seoul, Korea. See February 5, 2004 cost verification report. This and all other memoranda cited herein are on file in the Central Records Unit, room B–099 of the Department of Commerce building.

From January 16 through January 19, 2004 Department officials verified the sales response of ITWSFK in Seoul, Korea. *See* February 17, 2004 sales verification report.

On January 20, 2004 petitioner met with Department officials to discuss their concerns about some of the information on the record. *See* Memorandum from Fred Baker to the File, dated January 22, 2004.

On January 21, 2004 petitioner requested a hearing.

On January 22, 2004, petitioner submitted pre–verification comments for the upcoming further manufacturing verification in Romeo, Michigan.

On January 23, 2004 ITW requested to participate in the hearing. Also on January 23, 2004 petitioner submitted comments on ITW's sections supplemental A, B, and C responses and the submissions by three of ITW's affiliated U.S. resellers. Also on January 23, 2004 petitioner requested that the Department postpone the final determination until March 22, 2004.

From January 26 through January 28, 2004 Department officials verified the further manufacturing response of ITW Thermal Films (ITWTF) in Romeo, Michigan. See February 5, 2004 further–manufacturing verification report. From January 28 through January 30, 2004 Department officials verified the sales response of ITWTF in Romeo, Michigan. See February 18, 2004 CEP verification report.

On February 9, 2004 petitioner met with Department officials to discuss various aspects of the distribution process for TTR in both the United States and Korea. See Memorandum from Robert James to the File dated February 9, 2004. On February 11, 2004 petitioner made a submission in follow–up to the February 9, 2004 meeting with Department officials.

On February 12, 2004 the Department extended the deadline for issuing the final determination. *See Notice of Postponement of Final Antidumping Duty Determination: Wax and Wax/ Resin Thermal Transfer Ribbons from the Republic of Korea*, 69 FR 6941 (February 12, 2004).

On February 18, 2004 the Department issued a "post–preliminary analysis" of ITW's submitted data in response to the below–COP allegation made by petitioner. We initiated the below–cost sales investigation on November 19, 2003. The "post–preliminary analysis" consisted of a recalculation of ITW's dumping margin based on all the information on the record to date, including cost data and verification findings. *See* Memorandum from Fred Baker to the File dated February 18, 2004.

On February 26, 2004 ITW and petitioner submitted case briefs.

On February 27, 2004 petitioner withdrew its request for a hearing.

On March 2, 2004 ITW and petitioner submitted rebuttal briefs.

On March 3, 2004 petitioner met with Department officials to discuss issues raised in the case briefs. *See* Memorandum to the File dated March 4, 2004.

On March 10, 2004 ITW held a meeting with Department officials to discuss issues raised in the case briefs. *See* memorandum to the file dated March 10, 2004.

On March 25, 2004 the Department again extended the deadline for issuing the final determination. *See Notice of Postponement of Final Antidumping Duty Determination: Wax and Wax/ Resin Thermal Transfer Ribbons from the Republic of Korea*, 69 FR 15298 (March 25, 2004).

On March 22, 2004 Department officials met with counsel for petitioners. *See* Memorandum to the File dated March 23, 2004. The following day Department officials met with counsel for ITW. See Memorandum to the File dated March 23, 2004.

Period of Investigation

The period of investigation is April 1, 2002 through March 31, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated March 29, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from Korea with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that L<*35, -20<a*<35 and -40<b*<31, and black and near–black TTR. TTR is typically used in printers generating alphanumeric and machine–readable characters, such as bar codes and facsimile machines.

The petition does not cover pure resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on exchange rates in effect on the dates of the United States sales, as provided by the *Dow Jones Business Information Services*.

Verification

As provided in section 782(i) of the Tariff Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Affiliation Issues

Petitioner alleges in its February 26, 2004 Case Brief that ITW is affiliated to SKC Corporation, a Korean film producer which sold its TTR and specialty film mill to ITW in April 1999. Petitioner also accuses ITW of misreporting home market sales be concealing its affiliation with a certain home market customer. ITW denies both allegations in its March 2, 2004 Rebuttal Brief. A complete discussion of theses issues, necessitating extensive references to business proprietary information, is found in a memorandum to Joseph A. Spetrini, "Antidumping

Duty Investigation on Wax and Wax/Resin Thermal Transfer Ribbons from South Korea: Affiliation Issues Concerning Respondent Illinois Tool Works, Inc.," dated March 25, 2004. *See also*, the Decision Memorandum.

Country of Origin

As noted above, petitioner has requested that the Department determine that TTR produced in Korea (in jumbo roll, i.e., unslit form) that is slit in a third country does not change the country of origin for antidumping purposes. According to petitioner, because slitting does not constitute a "substantial transformation," Korean jumbo rolls slit in a third country should be classified as Korean TTR for antidumping purposes, and, therefore, within the scope of this investigation and any resulting order. Petitioner submitted comments on this request on October 28, 2003, December 5, 2003, January 5 and January 16, 2004. According to petitioner, substantial transformation does not take place because: 1) both slit and jumbo rolls have the same essential physical characteristics (*e.g.*, both have the same chemical properties that make them suitable for thermal transfer printing); 2) large capital investments are required for coating and ink–making (production stages prior to slitting), but not for slitting; 3) coating and ink–making require significantly more skill, expertise, and research and development; and, 4) the majority of costs and value comes from coating and ink–making. Petitioner states that, for purposes of this issue, slitting and packaging do not account for a substantial amount of the total cost of finished TTR (depending on the degree of automation and whether new or secondhand equipment is involved); and that a slitting operation requires a small amount of capital, compared with a large amount of capital required for a coating and ink–making operation.

Armor, the sole respondent in the investigation of TTR from France, argues that slitting does constitute substantial transformation, and, therefore, that the Department should determine that French jumbo rolls slit in a third country should be considered to have originated in that third country for antidumping purposes. Armor submitted comments on November 26, 2003, December 12, 2003, and January 9, 2004. Armor argues that substantial transformation does take place because: 1) slitting, and the repackaging that necessarily goes along with it, involves transforming the product into its final end–use dimensions, the insertion of one or two cores (for loading the ribbons into printers), and the addition of leaders, bridges, and trailers, which result in a new product, with a new name, new character, and new purpose; 2) petitioner excluded TTR slit to fax proportions, acknowledging the importance of slitting; and, 3) U.S. Customs and Border Protection (CBP) and the Court of International Trade (CIT) have determined that slitting and repackaging amount to substantial transformation. DigiPrint, in comments received on January 2, 2004, argues that the record of this investigation indicates that slitting and packaging account for a large amount (34%) of total cost, indicating substantial transformation.

The Department has considered several factors in determining whether a substantial transformation has taken place, thereby changing a product's country of origin. These have included: the value added to the product; the sophistication of the third–country processing; the possibility of using the third–country processing as a low cost means of circumvention; and, most prominently, whether the processed product falls into a different class or kind of product when compared to the downstream product. While all of these factors have been considered by the Department in the past, it is the last factor which is consistently examined and emphasized.[1] When the upstream and processed products fall into different classes or kinds of merchandise, the Department generally finds that this is indicative of substantial transformation. *See, e.g.*, Cold–Rolled 1993, 58 FR at 37066.

Accordingly, the Department has generally found that substantial transformation has taken place when the upstream and downstream products fall within two different "classes or kinds" of merchandise: (*see, e.g.*, steel slabs converted to hot–rolled band; wire rod converted through cold–drawing to wire; cold–rolled steel converted to corrosion resistant steel; flowers arranged into bouquets; automobile chassis converted to limousines).[2] Conversely, the Department almost invariably determines substantial transformation has not taken place when both products are within the same "class or kind" of merchandise: (*see, e.g.*, computer memory components assembled and tested; hot–rolled coils pickled and trimmed; cold–rolled coils converted into cold–rolled strip coils; rusty pipe fittings converted to rust free, painted pipe fittings; green rod cleaned, coated, and heat treated into wire rod).[3] In this case, both jumbo and slit TTR are within the same class or kind of merchandise, as defined in the Department's initiation and as defined for this final determination.

While slitting and packaging might account for 34 percent of the total cost of production,[4] the processes and equipment involved do not amount to substantial transformation of the jumbo TTR for antidumping purposes. According to information submitted by petitioner, and not rebutted by any party to this investigation, a slitting operation requires only a fraction of the capital investment required for a coating and

[1] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold- Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062, 37066 (July 9, 1993) (Cold-Rolled 1993); *Final Determination of Sales at Less Than Fair Value; Limousines From Canada*, 55 FR 11036, 11040, comment 10 (March 26, 1990) (*Limousines*); *Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39692, comment 28 (October 30, 1986) (*EPROMs*); and, *Cold-Rolled 1993*, 58 FR at 37066; respectively.

[2] *Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom*, 64 FR 30688, 30703, comment 13 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value- Stainless Steel Round Wire from Canada*, 64 FR 17324, 17325, comment 1 (April 9, 1999); *Cold-Rolled 1993*, 58 FR at 37066; *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review*, 55 FR 20491, 20499, comment 49 (May 17, 1990); and, Limousines, 55 FR 11040; respectively.

[3] *Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927, 70928 (November 27, 2002) (*DRAMs*); *EPROMs*, 51 FR at 39692; *Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan; Suspension of Investigation and Amendment of Preliminary Determination*, 51 FR 28396, 28397 (August 7, 1986); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22186 (May 3, 2001); *Memorandum to Troy H. Cribb, Acting Assistant Secretary, from Holly Kuga, Acting Deputy Assistant Secretary, Issues and Decision Memorandum for the Investigation of Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Taiwan*, comment 1 (May 22, 2000); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Canada*, 62 FR 51572, 51573 (October 1, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India*, 60 FR 10545, 10546 (February 27, 1995); respectively.

[4] The ITC report states that "[s]ix U.S. producers indicate that slitting and packaging accounts for an average of 34 percent of the cost of finished bar code TTR." *Certain Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and Korea, Investigations Nos. 731-TA-1039-1041 (Preliminary)*, (July 2003) (*ITC Report*), at 7. DigiPrint apparently is referring to this figure, when it refers to 34 percent in its January 2, 2004 submission. Figures placed on the record by petitioner related to this issue are proprietary, but indicate that the relevant figure might be significantly less than 34 percent, depending on the country in which the slitter is located, the type of equipment used, the degree of automation involved, and whether the process relies more on labor than capital.

ink–making operation.[5] Moreover, the ITC noted in this investigation that the "slitting and packaging process is not particularly complex, especially as compared to the jumbo TTR production process." *ITC Report*, at 7. The ITC also noted that the primary cost involved in a slitting and packaging operation is not capital cost, but direct labor cost, which, we note, might be hired cheaply in a third country. *Id.* at 14. Thus, it appears that a slitting operation could be established in a third country for circumvention purposes with far greater ease than a coating and ink–making operation.

Finally, the ITC concluded that, while slit and jumbo TTR are like products, U.S. slitting and packaging operations (or "converters") were not part of the domestic industry for purposes of this investigation, "for lack of sufficient production related activities." *Id.* at 13. The implication of the ITC's conclusion, based on its extensive multi–pronged analysis, is that TTR is the product of coating and ink–making, not slitting and packaging: "The production related activities of converters are insufficient for such firms to be deemed producers of the domestic like product." *Id.* While we are not bound by the ITC's decisions, the ITC's determination is important to consider in this particular instance because it is based on the full participation of respondents and petitioner, whereas respondent withdrew its information from our investigation.

As the Department has stated on numerous occasions, CBP decisions regarding substantial transformation and customs regulations, referred to by respondent, are not binding on the Department, because we make these decisions with different aims in mind (*e.g.*, anticircumvention). *See, e.g.*, DRAMs, 67 FR at 70928. The Department's independent authority to determine the scope of its investigations has been upheld by the CIT. *See Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983). Presumably, a CIT decision interpreting substantial transformation in the context of CBP regulations, also cited by respondent, also is not binding on the Department.

While the other facts noted by respondent are not necessarily irrelevant to this determination, they do not overcome the conclusion indicated by the fact that the slitting and packaging of jumbo rolls into slit TTR does not create a "new and different article." In other words, the totality of the circumstances indicates that slitting does not constitute substantial transformation for antidumping purposes. Even accepting, *arguendo*, DigiPrint's statement regarding the amount of total cost accounted for by slitting and packaging, and respondent's statements regarding how slitting and packaging transform the product into its final end–use form, the product still has not changed sufficiently to fall outside the class or kind of merchandise defined in this investigation. Jumbo rolls are intermediate products, and slit rolls are final, end–use products, but the transformation of an upstream product into a downstream product does not necessarily constitute "substantial transformation" and, in this case, does not, given the considerations listed above.

Similarly, in *DRAMs*, we decided that wafers shipped to a third country to be used in the assembly of DRAMs (subject merchandise) did not amount to substantial transformation because the wafers were the "essential" component in the product. In this case, the ITC report notes petitioner's statement, unrefuted by respondents, that "the essential characteristic of finished TTR, like that of jumbo TTR, is that of a strip of PET film coated with ink." We agree and note that the essential characteristic is contained in the jumbo TTR imported into the third country.

Therefore, in light of this fact and the facts discussed below, we determine that slitting jumbo rolls does not constitute substantial transformation. Jumbo rolls originating in Korea but slit in a third country will be subject to any antidumping duties imposed on Korean TTR, if an antidumping duty order on such products is issued.

[5] These figures agree with statements made by DNP, a respondent in the Japanese TTR investigation, recorded in the preliminary report by the U.S. International Trade Commission (ITC), that capital investment in a slitting operation was "generally very small" ($100,000 to $300,000). *Id.* at 14.

Changes Since the Preliminary Results

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodology and post–preliminary analysis methodology in calculating the final margin for ITW. These adjustments are discussed in the Decision Memorandum for this investigation.

Suspension of Liquidation

Because the estimated weight–averaged dumping margin for the investigated company is 1.65 percent (*de minimis*), we are not directing the CBP to suspend liquidation of entries of TTR from Korea.

Final Determination Margin

We determine that the following percentage weighted–average margin exists:

Exporter/manufacturer	Margin (percent)
ITW	1.65

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of our determination.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) or their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to section 735(d) and 777(i)(1) of the Tariff Act.

Dated: March 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix 1 Issues in the Decision Memorandum

Comment 1: Affiliation Between ITW and SKC
Comment 2: Alleged Affiliation with Customer
Comment 3: Costs of Connums Sold in the United States
Comment 4: Allocation Indices
Comment 5: Low Costs of Type 2 Wax With Some Resin Jumbo Rolls
Comment 6: Film Cost
Comment 7: Ink–Making Costs
Comment 8: Coating Index
Comment 9: Korean Slitting Cost
Comment 10: Alleged Incorrectly–Reported U.S. Further–Manufacturing Costs
Comment 11: Use of Adverse Facts Available
Comment 12: Allocation of Goodwill Expenses
Comment 13: Royalty Expenses
Comment 14: Non–Operating Income
Comment 15: Averaging Groups for U.S. Sales
Comment 16: Treatment of Non–Dumped Sales
Comment 17: Clerical Errors

[FR Doc. 04–7643 Filed 4–2–04; 8:45 am]
BILLING CODE 3510–25–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 99–2A005."

California Almond Export Association, LLC's ("CAEA") original Certificate was issued on December 27, 1999 (65 FR 760, January 6, 2000) and previously amended on June 25, 2001 (66 FR 34912, July 2, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: California Almond Export Association, LLC, 4800 Sisk Road, Modesto, California 95356.

Contact: Doug Youngdahl, Chairman, Telephone: (916) 446–8595.

Application No.: 99–2A005.

Date Deemed Submitted: March 23, 2004.

Proposed Amendment: California Almond Export Association, LLC seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Nutco, LLC doing business as Spycher Brothers, Turlock, California; and Treehouse California Almonds, LLC, Los Angeles, California;

2. Change the listing of the following Members: "A&P Growers Cooperative, Inc., Tulare, California" to the new listing "A&P Growers Cooperative, Inc., Clovis, California"; "Del Rio Nut Company, Livingston, California" to the new listing "Del Rio Nut Company, Inc., Livingston, California"; "Hilltop Ranch, Ballico, California" to the new listing "Hilltop Ranch, Inc., Ballico, California"; "Hughson Nut Company, Hughson, California" to the new listing "Hughson Nut, Inc., Hughson, California"; and "Minturn Nut Company, LeGrand, California" to the new listing "Minturn Nut Company, Inc., LeGrand, California"; and

3. Delete the following companies as "Members" of the Certificate: Calcot, Ltd., Bakersfield, California; California Independent Almond Growers, Ballico, California; and Kindle Nut Company, Denair, California.

Dated: March 30, 2004.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 04–7605 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032904E]

Proposed Information Collection; Comment Request; Billfish Certificate of Eligibility

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 4, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). A Certificate of Eligibility (COE) for Billfishes is required under 50 CFR 635 to accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the Atlantic Ocean management unit (described on the form), and identifies the vessel landing the billfish, the vessel's home port, the

port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor who subsequently receives or possesses the billfish. A standard form is not currently required to document the necessary information. However, NOAA is considering a proposed rule that would require a standard form, and its submission to NOAA after the final sale of the billfish. This collection is necessary to implement the Atlantic Billfish Fishery Management Plan, whose objective is to reserve Atlantic billfish for the recreational fishery.

II. Method of Collection

A paper form and recordkeeping are used.

III. Data

OMB Number: 0648–0216.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 100 for initial completion of certificate (50 dealers x 2 COEs) and 300 for subsequent billfish purchase recordkeeping.

Estimated Time Per Response: 20 minutes for initial completion of certificate and 2 minutes for subsequent billfish purchase recordkeeping.

Estimated Total Annual Burden Hours: 43.3 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–7512 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032904F]

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Implantation and Recovery of Archival Tags

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 4, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, F/SF1, Room 13563, 1315 East-West Highway, Silver Spring, MD 20910–3282; (phone 301–713–2347, ext. 109).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) operates a program to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). Archival tags are miniature data loggers that acquire information about the movements and behavior of the fish. Persons catching tagged fish are exempted from other normally applicable regulations, such as immediate release of the fish, but must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture. The information obtained is used by NOAA in the formation of international and domestic fisheries policy and regulations.

Persons outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs the information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce undue mortality.

II. Method of Collection

Catch notifications are provided a toll-free telephone number. Tags and associated information are mailed in (a reward is given for tag recoveries). . Notifications and reports of archival tagging efforts are provided in written form, meeting requirements set forth in regulations.

III. Data

OMB Number: 0648–0338.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 30 minutes for reporting on an archival tag recovery; 30 minutes for notification of planned archival tagging activity; and one hour for reports of archival tagging activity.

Estimated Total Annual Burden Hours: 15.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–7513 Filed 4–2–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112803C]

RIN 0648–AR74

Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces the approval of Amendment 17 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (FMP). This amendment is necessary to implement a rebuilding plan for the overfished stock of Pribilof Islands blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and is intended to achieve, on a continuing basis, optimum yield from the affected crab fisheries.

DATES: The amendment was approved on March 18, 2004.

ADDRESSES: Copies of Amendment 17 to the FMP and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS declared the Pribilof Islands stock of blue king crab (*Paralithodes platypus*) overfished because the spawning stock biomass was below the minimum stock size threshold defined in the FMP. On September 23, 2002, NMFS notified the Council that the Pribilof Islands blue king crab stock was overfished (67 FR 62212, October 4, 2002). The Council then developed a rebuilding plan within 1 year of notification as required by section 304(e)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In October 2003, the Council adopted Amendment 17, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock.

Amendment 17 specifies a time period for rebuilding the stock intended to satisfy the requirements of the Magnuson-Stevens Act. Under the rebuilding plan, the Pribilof Islands blue king crab stock is estimated to rebuild, with a 50 percent probability, within 10 years. The stock will be considered "rebuilt" when it reaches the maximum sustainable yield stock size level in two consecutive years. This rebuilding time period is as short as possible and takes into account the status and biology of the stock, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem, as required by the Magnuson-Stevens Act in section 304(e)(4)(A)(i).

The rebuilding harvest strategy, which closes the directed fishery until the stock is rebuilt, should result in more spawning biomass than allowing a fishery during the rebuilding period. With the directed fishery closed, more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. More spawning biomass would be expected to produce larger year-classes when environmental conditions are favorable.

This conservative rebuilding plan is warranted at this time for this stock given the concerns regarding the rebuilding potential of this stock, the potential vulnerability to overfishing, and the poor precision of survey estimates. The other alternatives under consideration that would allow fishing prior to stock rebuilding would not provide sufficient safeguards for this vulnerable stock. The preferred alternative, while forgoing harvest in the short-term, is the strongest guarantee that stock abundance will increase and support a fishery in the long term. Once rebuilt, fishing communities would once again have opportunities (both fishing and processing) to participate in this fishery. As this rebuilding plan applies the same restrictions to all participants, the plan allocates the fishery restrictions fairly and equitably among sectors of the fishery. Likewise, the plan allocates all recovery benefits fairly and equitably among sectors of the fishery.

No additional habitat or bycatch measures are part of this rebuilding plan because neither habitat nor bycatch measures are expected to have a measurable impact in rebuilding. Habitat is thoroughly protected from fishing impacts by the existing Pribilof Islands Habitat Conservation Zone, which encompasses the majority of blue king crab habitat. Bycatch of blue king crab in both crab and groundfish fisheries is a negligible proportion of the total population abundance.

An EA was prepared for Amendment 17 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socioeconomic impacts of the alternatives. A copy of the EA can be obtained from the NMFS (see **ADDRESSES**).

A notice of availability for Amendment 17 to the FMP, which describes the proposed amendment and invited comments from the public, was published in the **Federal Register** on December 18, 2003 (68 FR 70484). Comments were invited through February 17, 2004.

Response to Comments

NMFS received one public comment on Amendment 17.

Comment: The comment expressed a concern that there is too much commercial overfishing and too many violations occurring in the crab fisheries. The comment raised the following five issues regarding crab fisheries management:

1. Let the public comment by email.
2. Immediately establish no fishing sanctuaries.
3. The 10-year rebuilding period is too long and NMFS should cut harvest levels by 50 percent this year and 10 percent each succeeding year.
4. Increase fines and jail violators of fishing regulations.
5. Establish enforcement at the dock to search for violations of fisheries regulations.

Response: 1. As of February 2, 2004, NMFS accepts public comments via email.

2. Existing closed areas protect blue king crab and their habitat from the effects of fishing. Trawl fishing is prohibited in the Pribilof Islands Habitat Conservation Zone established to protect crab habitat in the Pribilof Islands area. The State of Alaska established a no-fishing zone to protect blue king crab in state waters around the St. Matthews, Hall, and Pinnacles Islands.

3. The 10–year rebuilding time period is as short as possible and takes into

account the status and biology of the stock, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem, as required by the Magnuson-Stevens Act in section 304(e)(4)(A)(i). Harvest levels do not need to be reduced, as the comment suggests, because harvests currently are prohibited. Under this rebuilding plan, the Pribilof Islands blue king crab fishery is closed until the stock rebuilds.

4. NMFS believes the fines and permit sanctions available under Magnuson-Stevens Act are sufficient to deter unlawful activity. Additionally, the Magnuson-Stevens Act does not provide authority for NMFS to jail violators of fishery regulations.

5. NMFS agrees that enforcement at the dock is an important component of ensuring compliance with fishery regulations, and, therefore, NMFS conducts dockside enforcement. NMFS determined that Amendment 17 to the FMP is consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendment 17 on March 18, 2004. Additional information about this action is contained in the December 18, 2003, notice of availability (68 FR 70484).

Dated: March 29, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–7509 Filed 4–02–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: May 13–14, 2004.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 8:30 a.m.–5 p.m. (May 13, 2004).

8:30 a.m.–12 p.m. (May 14, 2004).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553, e-mail: *rabold@afip.osd.mil.*

SUPPLEMENTARY INFORMATION: *General function of the board:* The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7614 Filed 4–2–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent to Grant an Exclusive License to University Massachusetts Lowell

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent Application No. 10,408,679 filed April 4, 2003, entitled "Polymeric Antioxidants" to University Massachusetts Lowell, with its principal place of business at 600 Suffolk Street, Second Floor South, Lowell, Massachusetts 01854.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center (SSC), Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within fifteen (15) days from the date of this published Notice, SSC receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The following Patent Application Number, Title and Filing date is provided:

Patent Application: 10/408,679.

Title: "Polymeric Antioxidants".

Filed: April 4, 2003.

Brenda S. Bowen,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 04–7615 Filed 4–2–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 5, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: ED Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: March 30, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Annual Performance Reports for FIPSE International Consortia Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 85.

Burden Hours: 20.

Abstract: The renewal of FIPSE's annual performance report for the three international programs is necessary to ensure that the information and data collected results in a balanced effective assessment of the student exchanges and curricular developments of the EC–US Program, the North American Program, and the US-Brazil Program.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2442. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–7542 Filed 4–2–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Geothermal Resource Exploration and Definition GRED–III

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of funding announcement number DE–PS36–04–GO94016.

SUMMARY: The Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is seeking financial assistance applications for the third Geothermal Resource Exploration and Definition (GRED III) Program. The regulations governing the funding opportunity for this program are contained in 10 CFR part 600. The Geothermal Technologies Program (GTP) is authorized under provisions of the Geothermal Energy Research, Development, and Demonstration Act of 1976, Pub. L. 93–410; Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, Pub. L. 101–218; and the Energy Policy Act of 1992, Pub. L. 102–486, Title XII. The Catalog of Federal Domestic Assistance (CFDA) Number for this Announcement is 81.087. In the period since enactment of the legislation, DOE has supported an ongoing program to develop commercially viable geothermal technologies. Through this Funding Opportunity Announcement (FOA), DOE intends to provide financial support for the exploration and definition of new geothermal resources which will ultimately lead to more electrical generation and direct-use applications from geothermal resources. Past GRED projects under GRED I and GRED II confirmed over 50 Mega Watts of geothermal resources in the western United States.

DATES: Issuance of the announcement was March 22, 2004.

ADDRESSES: To obtain a copy of the announcement, interested parties should access the DOE Golden Field Office Home Page at *http://www.go.doe.gov/business.html,* click on "Solicitations," and then access the announcement number identified above. The Golden Home Page will provide a link to the announcement number in the Industry Interactive Procurement System (IIPS) web site and provide instructions on using IIPS. The announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those announcements issued by the Golden Field Office. DOE will not issue paper copies of the announcement.

IIPS provides the medium for disseminating announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, then entering the company name/address of the applicant.

For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be submitted electronically through IIPS by "submitting a question" on the IIPS "Finanicial Assistance Form" specific to this announcement. Response to questions will be posted on IIPS and available through "View Questions."

Issued in Golden, Colorado, on March 22, 2004.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 04–7573 Filed 4–2–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–233–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

March 30, 2004.

Take notice that on March 29, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 339C, to become effective May 1, 2004.

Tennessee states that it is tendering the revised tariff sheet in order to clearly set forth the criteria that would give Tennessee the right to terminate a capacity release transaction in the event of the termination of a releasing shipper's contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–746 Filed 4–02–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–80–000, et al.]

NEGT Enterprises, Inc., et al.; Electric Rate and Corporate Filings

March 26, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. NEGT Enterprises, Inc.; National Energy Holdings Corporation; Beech Power Corporation; Plover Power Corporation; Dispersed Power Corporation; San Gorgonio Power Corporation; Larkspur Power Corporation; and Eagle Power Corporation; On Behalf of Themselves and Their Public Utility Subsidiaries

[Docket No. EC04–80–000]

Take notice that on March 25, 2004, NEGT Enterprises, Inc., National Energy Holdings Corporation, Beech Power Corporation, Plover Power Corporation, Dispersed Power Corporation, San Gorgonio Power Corporation, Larkspur Power Corporation, and Eagle Power Corporation, on behalf of themselves and their public utility subsidiaries, filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to complete the proposed intra-corporate reorganization described more fully in the Application.

Comment Date: April 15, 2004.

2. PPL Distributed Generation, LLC

[Docket No. EG04–44–000]

On March 24, 2004, PPL Distributed Generation, LLC (PPL Distributed), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PPL Distributed states that it is a Delaware limited liability company formed for the purpose of owning and operating certain distributed generation facilities located in New Jersey. PPL Distributed further states that it is an indirect subsidiary of PPL Corporation, a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

Comment Date: April 14, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–745 Filed 4–02–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7643–1]

Proposed Reissuance of General NPDES Permit for Offshore Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous State Waters (NPDES Permit Number AKG280000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of a general NPDES permit.

SUMMARY: The Director, Office of Water, EPA Region 10, proposes to reissue a general National Pollutant Discharge Elimination System (NPDES) permit for offshore oil and gas exploration facilities on the outer continental shelf and contiguous state waters pursuant to the provisions of the Clean Water Act (CWA) 33 U.S.C. 1251 *et seq*. The proposed permit will authorize offshore oil and gas statigraphic test and exploration wells and associated discharges in the Federal and State of Alaska waters of the Beaufort and Chukchi Seas. The proposed permit establishes effluent limitations, prohibitions, and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines at 40 CFR part 435, the State of Alaska's water quality standards (18 AAC 70), and the State of Alaska's wastewater disposal requirements (18 AAC 72). The fact sheet describes the basis for the specific limitations, conditions, and requirements of the proposed permit.

DATES: Interested persons may submit comments on the proposed reissuance of the general permit to EPA, Region 10 at the addresses below. Comments must be postmarked by May 20, 2004.

ADDRESSES: Comments on the proposed reissuance of the general permit must be sent to the attention of the Director, Office of Water, 1200 Sixth Avenue, M/S OW–130, Seattle, Washington 98101. Comments may also be submitted electronically to *koch.kristine@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed general permit and fact sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Kristine Koch at (206) 553–6705. Requests may also be electronically mailed to: *koch.Kristine@epa.gov*. The proposed general permit and fact sheet may also be found on the EPA Region 10 Web site at *www.epa.gov/r10earth.htm*; click on Water Quality, then click on NPDES permits under

Programs, and then click on draft permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits under the APA and thus not subject to the APA rulemaking requirements or the RFA.

Dated: March 29, 2004.

Christine Psyk,

Acting Director, Office of Water, Region 10.

[FR Doc. 04–7649 Filed 4–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0086]; FRL–7353–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 1, 2004 to March 18, 2004, consists of the PMNs and TME both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0086 and the specific PMN number or TME number, must be received on or before May 5, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0086. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2004–0086. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0086 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0086 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which

covers the period from March 1, 2004 to March 18, 2004, consists of the PMNs and TME both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TME

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/04 TO 03/18/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0393	03/01/04	05/29/04	Johnson Polymer LLC	(G) Polymeric coating vehicle	(G) Styrene acrylic coPolymer
P–04–0394	03/01/04	05/29/04	Johnson Polymer LLC	(G) Polymeric coating vehicle	(G) Styrene acrylic coPolymer
P–04–0395	03/01/04	05/29/04	The Dow Chemical Company	(S) Aqueous Polymer additive for oil field Chemicals	(G) Water soluble Polymer dispersion
P–04–0396	03/01/04	05/29/04	The Dow Chemical Company	(S) Aqueous Polymer additive for oil field Chemicals	(G) Water soluble Polymer dispersion
P–04–0397	03/01/04	05/29/04	The Dow Chemical Company	(S) Aqueous Polymer additve for oil field Chemicals	(G) Water soluble Polymer dispersion
P–04–0398	03/01/04	05/29/04	CBI	(G) Film adhesive	(G) Mdi based polyurethane Polymer
P–04–0399	03/01/04	05/29/04	Symrise Inc.	(G) Additive for industrial and consumer products dispersive use	(S) (4e)-3-methyl-4-tricyclo[5.2.1.0 2,6]dec-4-en-8-ylidenebutan-2-ol and (4e)-3-methyl-4-tricyclo[5.2.1.0 2,6]dec-3-en-8-ylidenebutan-2-ol
P–04–0400	03/02/04	05/30/04	CBI	(G) Paint additive	(G) Styrene-butadiene coPolymer latex
P–04–0401	03/02/04	05/30/04	CBI	(G) Paint additive	(G) Styrene-butadiene coPolymer latex
P–04–0402	03/02/04	05/30/04	CBI	(G) Additive for coatings (open, non-dispersive use)	(G) Blocked polyurethane prePolymer
P–04–0403	03/02/04	05/30/04	R. T. Vanderbilt Company, Inc.	(S) Friction reducing/antiwear agent for lubricants	(G) Amide-borate complex
P–04–0404	03/03/04	05/31/04	CBI	(G) Open, non-dispersive use	(G) Tetrabromophthalate diol diester
P–04–0405	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0406	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0407	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0408	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0409	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0410	03/03/04	05/31/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–04–0411	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer
P–04–0412	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer
P–04–0413	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer
P–04–0414	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer
P–04–0415	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/04 TO 03/18/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0416	03/04/04	06/01/04	Ashland Inc., Enviromental Health and Safety	(G) Adhesive, coating, ink	(G) Aromatic urethane diacrylate monomer
P–04–0417	03/02/04	05/30/04	Shin-Etsu Microsi Inc.	(G) Source material for contains coating plastic parts	(G) Polyfluoroalkylether
P–04–0418	03/04/04	06/01/04	CBI	(S) Antifoam	(G) Polysiloxane
P–04–0419	03/04/04	06/01/04	CBI	(S) Filler	(G) Treated silica
P–04–0420	03/04/04	06/01/04	CBI	(S) Adhesive	(G) Polysiloxane
P–04–0421	03/05/04	06/02/04	CBI	(S) Reactive diluent	(G) Polyester polycarbamate
P–04–0422	03/05/04	06/02/04	CBI	(S) Ingredient for use in fragrances for soaps, detergents, cleaners and other household products	(G) Tetraalkyl indone
P–04–0424	03/05/04	06/02/04	Symrise Inc.	(G) Additive for industrial and consumer products dispersive use	(S) 4-methoxy-2,2,7,7-tetramethyltricyclo[6.2.1.0 1,6]undec-5-ene(methyl-2,2,7,7-tetramethyltricyclo[6.2.1.0 1,6]undec-5-ene-4-yl ether
P–04–0425	03/08/04	06/05/04	CBI	(G) Additive for coatings	(G) Ethylene oxide, alcohol blocked coPolymer
P–04–0426	03/08/04	06/05/04	CBI	(G) Intermediate	(G) Dithiophosphate alkyl ester
P–04–0427	03/08/04	06/05/04	CBI	(G) Chemical intermediate, destructive use	(G) Aromatic ester
P–04–0428	03/09/04	06/06/04	CBI	(G) Sizing agent for paper and board	(G) Styrene acrylate emulsion
P–04–0429	03/09/04	06/06/04	CBI	(S) Filler	(G) Treated silica
P–04–0430	03/09/04	06/06/04	CBI	(S) Filler	(G) Treated silica
P–04–0431	03/09/04	06/06/04	CBI	(S) Filler	(G) Treated silica
P–04–0432	03/09/04	06/06/04	CBI	(S) Filler	(G) Treated silica
P–04–0433	03/10/04	06/07/04	CBI	(G) Polymeric admixture for cements	(G) Polycarboxylate Polymer modified with alkylpoly(oxyalkylenediyl), calcium salt
P–04–0434	03/10/04	06/07/04	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Halo sulfonyl substituted alkane
P–04–0435	03/09/04	06/06/04	CBI	(G) Raw material for Polymer	(G) Polyester of adipic acid
P–04–0436	03/11/04	06/08/04	BASF Corporation	(G) Radiation curing agent	(G) Urethane acrylate
P–04–0437	03/11/04	06/08/04	CBI	(G) Polymer for coatings	(G) Acrylate coPolymer
P–04–0438	03/12/04	06/09/04	CBI	(G) Radiation curable inks, coatings and printing plates.	(G) Acrylate ester
P–04–0439	03/15/04	06/12/04	International Flavors and Fragrances Inc.	(S) Ingrediet for use in Fragrances for soaps, detergents, cleaners and other household products	(S) Propanedioic acid, 1-(3,3-dimethylcyclohexyl)ethyl ethyl ester; propanedioic acid, 3,3,7-trimethylcycloheptyl ethyl ester
P–04–0440	03/15/04	06/12/04	Symrise Inc.	(G) Additive for industrial and consumer products dispersive use	(S) alpha.-methylcyclohexanepropanol
P–04–0441	03/15/04	06/12/04	CBI	(G) An open non-dispersive use	(G) Bisphenol a type epoxy resin salt
P–04–0442	03/15/04	06/12/04	CBI	(G) Polymer curing agent for coating applications	(G) Reaction product of 4,4′-(1-methylethylidene)bisphenol, Polymer with (chloromethyl) oxirane; polyethylene glycol; ethyleneamine; cresyl glycidyl ether
P–04–0443	03/12/04	06/09/04	Hi-tech Color, Inc.	(G) Polyurethane resin for coating agent	(G) Aliphatic polyurethane
P–04–0444	03/15/04	06/12/04	CBI	(G) Open, nondispersive use; pigment additive	(G) Metal salt of a sulphonic acid of a heterocyclic molecule
P–04–0445	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0446	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0447	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0448	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0449	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0450	03/12/04	06/09/04	CBI	(G) Catalyst	(G) Acid amine salt
P–04–0451	03/16/04	06/13/04	BASF Corporation	(S) Dye transfer inhibitor in powder or liquid detergents	(G) CoPolymer of 1-vinylimidazol and 1-vinyl-2-pyrrolidone, modified
P–04–0452	03/17/04	06/14/04	CBI	(S) Organic synthesis intermediate	(G) Benzoic acid, 2-[3-oxo-6-(phenylmethoxy)-2,7-dipropyl-3h-heteropolycycle-9-yl]-, phenylmethyl ester
P–04–0453	03/17/04	06/14/04	CBI	(S) Organic synthesis intermediate	(G) Spiro[isobenzofuran-1(3h),9′-[9h]heteropolycycle]-3-one, 3′,6′-dihydroxy-2′,7′-dipropyl-

I. 63 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/04 TO 03/18/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0454	03/17/04	06/14/04	CBI	(G) Component of manufactured consumer article-contained use	(G) Spiro[isobenzofurane-1(3h),9′-[9h]heteropolycycle]-3-one, 3′-hydroxy-6′-(phenylmethoxy)-2′,7′-dipropyl-
P–04–0455	03/17/04	06/14/04	CBI	(S) Organic synthesis intermediate	(G) 4-propyl-1,3-disubstituted benzene
P–04–0456	03/16/04	06/13/04	PPG Industries, Inc.	(G) Component of a packaging coating	(G) Neutralized acrylic Polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 03/01/04 TO 03/18/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–04–0003	03/16/04	04/29/04	PPG Industries, Inc.	(G) Component of a packaging coating	(G) Neutralized acrylic Polymer

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 27 NOTICES OF COMMENCEMENT FROM: 03/01/04 TO 03/18/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–0924	03/17/04	03/04/04	(S) Tellurium, tetrakis[bis(2-methylpropyl)carbamodithioato-kappa s, kappa s′]-
P–03–0014	03/17/04	03/08/04	(G) Crosslinking stoving urethane resin
P–03–0029	03/02/04	02/04/04	(G) Disazo yellow pigment
P–03–0196	03/12/04	03/03/04	(G) Metallic diol
P–03–0232	03/08/04	02/12/04	(G) Alkylpolysiloxanes, aminoalkyl groups modified
P–03–0416	03/08/04	03/02/04	(G) Dimethyl-oxo-carboxylic acid
P–03–0475	03/15/04	03/10/04	(G) 2h-pyran-2-one, substituted
P–03–0506	03/08/04	02/10/04	(G) Phosphate esters of acrylate
P–03–0663	03/12/04	02/19/04	(G) Aliphatic epoxyacrylate
P–03–0720	03/17/04	03/04/04	(G) Aromatic polyisocyanate
P–03–0820	03/16/04	02/15/04	(G) Sulfurized vegetable oil
P–03–0823	03/02/04	02/04/04	(G) Polybutadiene prePolymer
P–03–0831	03/02/04	02/18/04	(G) Tertiary amine carboxylic acid compound
P–04–0017	03/08/04	02/11/04	(G) Octyl-d-glucoside
P–04–0028	03/10/04	02/18/04	(G) Methylene di (phenylene isocyanate) Polymer with substituted propanol and secondary butyl phenol
P–04–0069	03/10/04	02/23/04	(G) Acid modified chlorinated polyolefin
P–04–0081	03/15/04	03/08/04	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–04–0082	03/15/04	03/08/04	(G) Polyalkyene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–04–0099	03/02/04	02/02/04	(G) Intermediate for diazo yellow pigment
P–04–0107	03/10/04	02/26/04	(G) Substituted amino ethane sulfonic acid salt
P–04–0109	03/15/04	02/10/04	(G) Amine prePolymer
P–04–0115	03/08/04	02/17/04	(S) 2-propenoic acid, 2-chloro-, methyl ester, Polymer with (1-methylethenyl)benzene
P–04–0137	03/15/04	03/08/04	(G) Polyalkylene glycol alkyl ether sulfate, reaction products with allyl glycidyl ether, ammonium salt
P–04–0140	03/09/04	02/23/04	(G) Fatty acid ester salt
P–04–0149	03/01/04	02/24/04	(G) Aliphatic polyamide
P–94–1559	03/15/04	02/20/04	(S) Zinc (1,2,3-propanetriolato(2-)-01, 02) homoPolymer, stereoisomer
P–97–0942	03/05/04	02/09/04	(G) Polycarbamate resin

List of Subjects

Enviromental protection, Chemicals, Premanufacturer notices.

Dated: March 25, 2004.

Anthony Cheatham,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–7650 Filed 4–2–04; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the April 8, 2004 regular meeting of the Farm Credit Administration Board (Board) has been rescheduled. The regular meeting of the Board will be held April 22, 2004 starting at 9 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: April 1, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–7787 Filed 4–1–04; 1:29 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, April 6, 2004, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interim Final Rule Amending Part 335 to Require Electronic Filing of Beneficial Ownership Reports

Memorandum and resolution re: Part 352—Final Rule Amending the FDIC's Rehabilitation Act Regulation

Memorandum and resolution re: Amendment to Interim Final Rule: Part 325, Extension of Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking re: Whether Funds Underlying Stored Value Cards Qualify as Insurable "Deposits"

Memorandum and resolution re: Notice of Proposed Rulemaking—12 CFR part 334: Medical Privacy Regulations under the Fair and Accurate Credit Transactions Act of 2003

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: March 30, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–742 Filed 4–02–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, April 6, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2) and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: March 30, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–743 Filed 4–02–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Douglas Carpenter, Supervisory Financial Analyst (202–452–2205) or Wanda Dreslin, Supervisory Financial Analyst (202–452–3515) for information concerning the specific bank holding company reporting requirements. The following may also be contacted regarding the information collection:

Acting Federal Reserve Board Clearance Officer – Michelle Long– Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer – Joseph Lackey– Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority the revision, without extension, of the following reports:

Report title: Financial Statements for Bank Holding Companies.

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9CS, and FR Y–9ES.

OMB control number: 7100–0128.

Frequency: Quarterly, semiannually, and annually.

Reporters: Bank holding companies (BHCs).

Annual reporting hours: 369,113.

Estimated average hours per response: FR Y–9C: 34.80 hours, FR Y–9LP: 4.75 hours, FR Y–9SP: 4.09 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes.

Number of respondents: FR Y–9C: 2,113, FR Y–9LP: 2,455, FR Y–9SP: 3,312, FR Y–9CS: 600; FR Y–9ES: 92.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHCs that have total assets of $150 million or more and by lower–tier BHCs that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

The FR Y–9ES is filed annually by BHCs that are Employee Stock Ownership Plans (ESOPs).

Current Actions: 369,113.

On December 15, 2003, the Federal Reserve issued for public comment proposed revisions to bank holding company reports (68 FR 69700). The comment period expired on February 13, 2004. The Federal Reserve received comment letters from one bank holding company (BHC), one trade association and a Federal Reserve district bank. The comments received are addressed below.

Voluntary Advance Collection of Summary FR Y–9C Data from the Largest BHCs

The Federal Reserve proposed to incorporate into the FR Y–9C information collection the advance collection of key FR Y–9C summary items from selected large BHCs. These data would be collected in advance of the regular FR Y–9C filing deadline on a voluntary, as–needed basis to supplement information published in BHC press releases. Generally, commenters recognized the need for this data and indicated that they could provide the information requested.

One commenter asked that the Federal Reserve limit any expansion in scope of the data collection, and subject any changes in scope to the report approval process. The amount of information collected from each BHC in any quarter will vary depending on the nature of the items in question, their relevance to the BHC, and the basis of presentation used in the BHC's press release. Also, the items collected may change over time, particularly if the manner in which financial information is communicated in press releases begins to diverge more significantly from the manner in which data are presented in the FR Y–9C. However, the information to be collected is generally available in the BHC's management information systems. Accordingly, even with such changes, this information collection would not exceed the estimated average burden of 30 minutes per respondent without being subject to the report approval process (including a formal notice and comment period).

Another commenter sought confirmation that the timing for the collection of this information will not change when the FR Y–9C filing deadline is accelerated effective with the June 30, 2004, reporting date. The change in filing deadlines will not affect the timing of the collection of advance data from the largest BHCs. The commenter also sought confirmation that collection of this information would be granted permanent confidential treatment. Collection of this information will be held as confidential, any change to this treatment would be subject to the report approval process (including a formal notice and comment period).

Reporting of Trust Preferred Securities

The Federal Reserve proposed to modify the definition of Schedule HC, Balance Sheet, item 20, "Other liabilities," and Schedule HC–G, Other Liabilities, item 4, "Other," to include information on trust preferred securities. This information would no longer be included in Schedule HC, item 22, "Minority interest in consolidated subsidiaries and similar items." BHCs were advised that this proposed reporting change does not represent any change to the risk–based capital treatment for trust preferred securities. Consistent with guidance previously provided in Federal Reserve Supervisory Letter SR 03–13 of July 2, 2003, BHCs should continue to include eligible trust preferred securities in their tier 1 capital for regulatory capital purposes until further notice is given to the contrary. The amounts qualifying for inclusion in tier 1 capital should be reported in Schedule HC–R, Regulatory Capital, item 6, in accordance with the reporting instructions. The Federal Reserve will review the regulatory implications of any accounting treatment changes and, if necessary or warranted, will provide further appropriate guidance.

One commenter supported this change and further recommended that trust preferred securities be reported in a new line item on Schedule HC–R, stating that inclusion of a separate line within Schedule HC–R will help clarify the capital treatment and overall computation of tier 1 capital. The Federal Reserve supports this change and will add a new item 6.b to Schedule HC–R, "Qualifying trust preferred securities." Current Schedule HC–R, item 6, "Qualifying minority interests in consolidated subsidiaries" will be renumbered as item 6.a. The reporting of a separate-line item for qualifying trust preferred securities on HC–R will clarify that tier 1 capital treatment of these securities has not changed at this time even though they have been reclassified from minority interest to other liabilities on the balance sheet.

Another commenter inquired about the reporting impact of Financial Accounting Standards Board (FASB) Financial Interpretation No. 46, "Consolidation of Variable Interest Entities," (FIN 46) issued in 2003, for the deconsolidation of special purpose entities used to issue trust preferred securities. BHCs are encouraged to consult with their external auditor on the appropriate application of generally accepted accounting principles (GAAP), including FIN 46 and revised FIN 46 (FIN 46R), on the consolidation or deconsolidation of trusts issuing trust preferred stock for financial statements and regulatory reporting. Consistent with their GAAP determination and SR 03–13, BHCs that deconsolidate such trusts for financial reporting purposes should include the full amount of the deeply subordinated note issued to the trust in Schedule HC, Balance Sheet, item 20, "Other liabilities," and Schedule HC–G, Other Liabilities, item 4, "Other," and the BHCs investment in the special purpose subsidiary should be reported in Schedule HC, item 8, "Investments in unconsolidated subsidiaries and associated companies." The amount of the subordinated note issued to the trust, net of the BHC's investment in the special purpose subsidiary, is equivalent to the amount of the trust preferred securities issued. The net amount (that qualifies for inclusion in tier 1 capital) should be reported in new item 6.b and in memoranda item 3.d, "Other cumulative preferred stock eligible for inclusion in Tier 1 capital."

Editing of Data by Respondents

. The Federal Reserve proposed to require data validation checks to be performed by respondents in conjunction with the electronic submission of the FR Y–9 reports (except for the FR Y–9CS) as a condition for the accepted filing of the reports. Implementation of this requirement is targeted for the September 30, 2004, reporting date for FR Y–9C and FR Y–9LP respondents and for the December 31, 2004, reporting date for FR Y–9SP and FR Y–9ES respondents.

Two commenters expressed concerns that thorough testing be conducted sufficiently before the implementation of this requirement. The Federal Reserve will conduct thorough testing of the enhanced internet submission facility (IESUB), and the enhanced IESUB will be available to respondents and software vendors for testing approximately three months prior to implementation.

One commenter sought assurance from the Federal Reserve that BHCs will be allowed to use enhanced vendor software to perform quality edit checks and transmit edit explanations to the Federal Reserve. The Federal Reserve will provide specifications and guidance for creating files containing the data and edit explanations that can be uploaded to IESUB to any interested BHCs and software vendors. However, the Federal Reserve cannot warrant the availability or performance of software provided by private corporations. This commenter also sought confirmation that explanatory comments that address any quality edit exceptions would be granted permanent confidential treatment. Collection of this information will be held as confidential. Any change to this treatment would be subject to the report approval process (including a formal notice and comment period).

BHCs interested in learning more about IESUB submission options and in obtaining updates on data editing enhancements as they become available are encouraged to go to the Web site www.reportingandreserves.org for additional information.

Board of Governors of the Federal Reserve System, March 30, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E4–751 Filed 4–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 4, 2004.

ADDRESSES: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*; by e–mail to regs.comments@federalreserve.gov; or by fax to the Office of the Secretary at (202)452–3819 or (202) 452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at www.regulations.gov. All public comments are available from the Board's web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

A copy of the comments may also be submitted to the OMB desk officer for

the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority The Extension For Three Years, Without Revision, Of The Following Reports

1. Report title: Notice of Proposed Stock Redemption.

Agency form number: FR 4008.

OMB control number: 7100–0131.

Frequency: On occasion.

Reporters: Bank holding companies.

Annual reporting hours: 171 hours.

Estimated average hours per response: 15.5 hours.

Number of respondents: 11.

General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)) and is generally not given confidential treatment.

Abstract: The Federal Reserve requires certain bank holding companies (BHCs), based on an amount of redemptions over a defined period, to give written notice to the appropriate Reserve Bank before purchasing or redeeming their equity securities. There is no formal reporting form. The Federal Reserve uses the information to fulfill its statutory obligation to supervise BHCs.

2. Report title: Notice Claiming Status as an Exempt Transfer Agent

Agency form number: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Reporters: Banks, bank holding companies (BHCs), and certain trust companies.

Annual reporting hours: 6 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 3.

General description of report: This information collection is voluntary (15 U.S.C. 78q–1(c)(1)) and the Federal Reserve is authorized to collect this data (15 U.S.C. 78c (a)(34)(B)(ii)). The data collected are not given confidential treatment.

Abstract: Banks, BHCs, and trust companies subject to the Federal Reserve's supervision that are low–volume transfer agents voluntarily file the notice on occasion with the Federal Reserve. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the Securities and Exchange Commission (SEC). The Federal Reserve uses the notices for supervisory purposes because the SEC has assigned to the Federal Reserve responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. The notice is made by letter; there is no reporting form.

3. Report title: Reports Related to Securities Issued by State Member Banks as Required by Regulation H.

Agency form number: Reg H–1.

OMB control number: 7100–0091.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 1,390 hours.

Estimated average hours per response: 5.11 hours.

Number of respondents: 16.

General description of report: This information collection is mandatory (15 U.S.C. 781(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.

Board of Governors of the Federal Reserve System, March 30, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E4–761 Filed 4–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Clay M. and Bernice H. Corman, Nicholasville, Kentucky; to retain voting shares of Citizens National Bancshares, Inc., Nicholasville, Kentucky, and thereby indirectly retain voting shares of Citizens National Bank of Jessamine County, Nicholasville, Kentucky.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Old Post Road, L.P., Madison, Georgia; Floyd C. Newton, Jr., Madison, Georgia, and Floyd C. Newton, III, Atlanta, Georgia; to acquire voting shares of Madison Bank Corporation, and thereby indirectly acquire voting shares of Bank of Madison, Madison, Georgia.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Victor Philip Reim, St. Paul, Minnesota; Erick John Reim, Vadnais Heights, Minnesota; Ann Reim Woessner, Roseville, Minnesota; and Amy Lynn Amundson, Alexandria, Minnesota, to acquire control of Alliance Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire control of American Bank, Eau Claire, Wisconsin; American Bank Lake City, Lake City, Minnesota; and Alliance Bank, New Ulm, Minnesota.

Board of Governors of the Federal Reserve System, March 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–749 Filed 4–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. CSBC Financial Corporation, Cropsey, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Cropsey, Cropsey, Illinois.

Board of Governors of the Federal Reserve System, March 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–750 Filed 4–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Public Meeting: Application by J. P. Morgan Chase & Co., New York, New York, to Merge with Bank One Corporation, Chicago, Illinois

AGENCY: Federal Reserve System

ACTION: Notice of Public Meetings

SUMMARY: Two public meetings will be held regarding the application submitted by J. P. Morgan Chase & Co., New York, New York, to merge with Bank One Corporation, Chicago, Illinois, and acquire its banking and nonbanking subsidiaries pursuant to the Bank Holding Company Act ("BHC Act") and related statutes. The purpose of the public meetings is to collect information relating to factors the Board is required to consider under the BHC Act.

DATES AND TIMES: The New York meeting will be held on Thursday, April 15, 2004, at 9:00 a.m. Eastern Time. The Chicago meeting will be held on Friday, April 23, 2004, at 8:30 a.m. Central Time.

ADDRESSES: The public meeting in New York will be held at the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York, and will begin at 9:00 a.m. Eastern Time. The public meeting in Chicago will be held at the Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois, and will begin at 8:30 a.m. Central Time.

FOR FURTHER INFORMATION CONTACT: For the New York meeting, contact John G. Ricketti, Vice President, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045 (facsimile: 212/720–2845). For the Chicago meeting, contact Alicia Williams, Vice President, Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60604 (facsimile: 312/913–2626).

SUPPLEMENTARY INFORMATION: On February 9, 2004, J. P. Morgan Chase & Co. ("J. P. Morgan") requested the Board's approval under the BHC Act (12 U.S.C. 1841 et seq.) and related statutes to merge with Bank One. The Board hereby orders that public meetings on the J. P. Morgan/Bank One proposal be held in New York, New York, and Chicago, Illinois.

Purpose and Procedures

The purpose of the public meetings is to collect information relating to factors the Board is required to consider under the BHC Act. These factors are (1) the effects of the proposal on the financial and managerial resources and future prospects of the companies and banks involved in the proposal, (2) competition in the relevant markets, and (3) the convenience and needs of the communities to be served. Convenience and needs considerations include a review of the records of performance of J.P. Morgan and Bank One under the Community Reinvestment Act, which requires the Board to take into account in its review of a bank acquisition or merger proposal each institution's record of meeting the credit needs of its entire community, including low–and moderate–income neighborhoods, consistent with the safe and sound operation of the institution. 12 U.S.C. 2903.

Procedures for Hearing

Testimony at the public meeting will be presented to a panel consisting of a Presiding Officer and other panel members appointed by the Presiding Officer. In conducting the public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to this public meeting. Panel members may question witnesses, but no cross–examination of witnesses will be permitted. The public meeting will be transcribed and information regarding procedures for obtaining a copy of the transcript will be announced at the public meeting.

On the basis of the requests received, the Presiding Officer will prepare a schedule for persons wishing to testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the Presiding Officer may limit the time for presentations. At the discretion of the Presiding Officer, persons not listed on the schedule may be permitted to speak at the public meeting if time permits at the conclusion of the schedule of witnesses. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation.

Request to Testify

All persons wishing to testify at the meeting to be held in New York must submit a written request to John G. Ricketti, Vice President, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045 (facsimile: 212/720–2845) not later than close of business on Monday, April 5, 2004. All persons wishing to testify at the meeting to be held in Chicago, must submit a written request to Alicia Williams, Vice President, Federal Reserve Bank of Chicago, 230 South LaSalle Street,

Chicago, Illinois 60604 (facsimile: 312/913–2626) not later than close of business on Monday, April 5, 2004. The request must include the following information: (i) identification of which meeting the participant wishes to attend; (ii) a brief statement of the nature of the expected testimony (including whether the testimony will support or oppose the proposed transaction, or provide other comment on the proposal) and the estimated time required for the presentation; (iii) address and telephone number (and facsimile number and e–mail address, if available) of the person testifying; and (iv) identification of any special needs, such as from persons desiring translation services, persons with a physical disability who may need assistance, or persons requiring visual aids for their presentation. To the extent feasible, translators will be provided to persons wishing to present their views in a language other than English if this information is included in the request to testify. Persons interested only in attending the meeting but not testifying need not submit a written request to attend.

By order of the Board of Governors acting through the General Counsel pursuant to delegated authority, effective March 31, 2004.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 04–7687 Filed 4–2–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "AHRQ Grants Reporting System (GRS)". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 4, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Suite 5022, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"AHRQ Grants Reporting System (GRS)"

AHRQ has identified the need to establish a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the Agency. The proposed system will address the shortfalls in the current reporting process and establish a consistent and comprehensive grants reporting solution for AHRQ. Currently, AHRQ receives grants continuation applications on an annual basis from all grantees. The progress report, which represents a portion of the annual continuation application, is inadequate because it is too infrequent and does not necessarily capture the information that AHRQ requires to respond to internal and external inquiries.

The reporting system will also provide a centralized repository of grants research information that can be used to support initiatives within the Agency's research plans for the future and to support activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning.

AHRQ currently conduct quarterly conference calls with some grantees. The content, frequency, and focus of these calls vary. In some grant programs, the number of participants on these calls may be so large as to prohibit quarterly updates from all participants in order to avoid creating an extremely lengthy conference call and to allow the Agency to address other important issues during these calls.

The GRS will support the timely collection of important information related to the life cycle of all a grants. This information includes: significant changes in project goals, methods, study design, sample or subjects, interventions, evaluation, disseminations, training, key personnel, key preliminary findings; significant problems and resolutions; publications and presentations; tools and products; and new collaborations/partnerships with AHRQ grantees or others conducting related research. Collecting this information in a systematic manner will:

- Promote the transfer of critical information more frequently and efficiently which will enhance the Agency's ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services.
- Increase the efficiency of the Agency in responding to ad-hoc information requests, Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.
- Establish a consistent approach throughout the Agency for information collection about grant progress and a systematic basis for oversight and for facilitating potential collaborations among grantees.
- Decrease the inconvenience and burden on grantees of unanticipated ad-hoc requests for information by the Agency in response to particular (one-time) internal and external requests for information.

Data Confidentiality Provisions

Confidential commercial information will be protected in accordance with 18 U.S.C. 1905. Information about Principal Investigators will be maintained in accordance with the Privacy Act, 5 U.S.C. 552a. The submitted reports will be printed and included in the official grant file. All of these files will be retained according to existing Agency policies and procedures and archived as required.

Methods of Collection

The data will be collected using an Adobe Acrobat Portable Document Format (PDF) electronic reporting form developed specifically for the purpose of collecting information quarterly. To reduce burden and to the extent possible, these forms will be pre-populated with reoccurring information needed to specifically identify the institution, project, principal investigator, and other similar information.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey	Number of respondents*	Average estimated time per respondent in minutes	Average estimated total burden hours	Estimated annual cost to the government
1st Quarter	500	10	83.33	0
2nd Quarter	500	10	83.33	0
3rd Quarter	500	10	83.33	0
Annual Total	1,500	.....	250	0

*The estimate for number of respondents for the initial implementation is 100 per quarter. The estimate included in the table assumes wider implementation by the Agency.

Request for Comments

In accordance with the above cited legislation, comments on the above described systematic grant oversight information collection are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 26, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–7652 Filed 4–2–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Agency for Healthcare Research and Quality.

ACTION: Annual publication of HHS Privacy Act System notices.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) has conducted a comprehensive review of all Privacy Act systems of records and is publishing a Table of Contents of active systems and a comprehensive publication of all its active systems consolidating minor changes in accordance with the Office of Management and Budget Circular No. A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals.

SUPPLEMENTARY INFORMATION: AHRQ has completed the annual review of its systems notices and has determined that minor changes are needed. AHRQ has consolidated such minor changes to make a comprehensive publication of all its system notices. Published below are: (1) A Table of Contents which lists all active systems of records in AHRQ, and (2) a complete text of all notices consolidating minor changes which affect the public's right or need to know, such as changes in the system location of records, the designation and address of system managers, clarification of system name, records retention and disposal, and minor editorial changes.

Dated: March 22, 2004.

Carolyn M. Clancy,

Director.

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09–35–0001

SYSTEM NAME:

Agency Management Information System/Grants (AMIS/GRANTS and CONTRACTS), HHA/AHRQ/OPART. The "Agency Management Information System/Grants and Contracts (AMIS/GRANTS and CONTRACTS), HHS/AHRQ/OM" was previously named the "Agency for Healthcare Research and Quality, Grants Information and Tracking System with Contracts Component (GIAnT), HHS/AHRQ/OM".

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Agency for Healthcare Research and Quality, Office of Performance, Accountability, Resources and Technology, 540 Gaither Road, Rockville, Maryland 20850.

Program Support Center, Office of Management, Division of Acquisition Management, Parklawn Building, Room 5C–10, 5600 Fishers Lane, Rockville, Maryland 20857.

For a list of contractors, please write to the system manager at the address listed below.

Inactive records will be stored at: Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20746–8001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains the names of research training and career development grant applicants and principal investigators, research training grant program directors, and research fellowship recipients; peer and other special reviewers; grant and contract project directors and other key personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research grant, research training grant, research career development, research fellowship, and contract files, including applications, proposals, award notices, and summary comments of peer reviewers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

AHRQ grants and contract administration authorities in Title IX of the Public Health Service (PHS) Act (42

U.S.C. 299–299c–6); Sec. 1142 of the Social Security Act (42 U.S.C. 1320b–12) and Sec. 487 PHS Act (42 U.S.C. 288) (National Research Service Awards).

PURPOSE(S):

The information in this system is used to facilitate day-to-day grants and contracts management operations and for purposes of review, analysis, planning and policy formulation by AHRQ staff members and by other components of DHHS which conduct research. AHRQ also may refer these records to the appropriate office in the Department for the purpose of monitoring payback; if necessary, debt collection; and investigation of alleged scientific misconduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, 5 where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose of which the records were collected.

3. AHRQ may disclose information about an individual grant or contract application or fellowship applicant to credit reporting agencies to obtain a credit report in order to determine his/her credit worthiness.

4. Limited disclosures, pursuant to 5 U.S.C. 552a(b)(12), may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681ff.) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) after the procedural prerequisites of 31 U.S.C. 3711 have been followed. The purpose of such disclosures is to aid in the collection of outstanding debts owed to the Federal Government, i.e., providing an incentive for delinquent debtors to pay the Government.

5. Disclosure may be made to the National Technical Information Service (NTIS), U.S. Department of Commerce, to contribute to the Smithsonian Science Information Exchange, for dissemination of scientific and fiscal information on funded awards (abstracts and relevant administrative and financial data.)

6. Disclosure may be made to qualified experts, not within the definition of Department employees, for opinions, as a part of the grant application or contract proposal review process.

7. Disclosure may be made to an AHRQ grantee or contractor for the purposes of (a) carrying out research, or (b) providing services relating to grant review, or for carrying out quality assessment, program evaluation, and/or management reviews. They will be required by written agreement to maintain Privacy Act safeguards with respect to such records.

8. Disclosure may be made to a Federal Agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit of the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

9. Where Federal agencies having power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

10. Disclosure may be made to the cognizant Audit Agency for auditing.

11. In the event that a system of records maintained by the Department indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred for purposes of litigation, as a routine use, to the appropriate agency, whether Federal (*e.g.*, the Department of Justice), or State (*e.g.*, the State's Attorney General's Office) charged with the responsibility of investigating or processing such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

12. Disclosure may be made to the grant/contractor institution in connection with performance or administration under the terms and condition of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant/contract proposal.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on hard disks with magnetic tape backup as well as in manual files (file folders).

RETRIEVABILITY:

Electronic records are retrievable by key data fields such as investigator name, application, grant or contract number. Paper records are retrievable by name of principal investigator and/or grant/contract number.

SAFEGUARDS:

1. Authorized users: All AHRQ staff working with grants or contracts have access to the system. Level of access is determined by individual need-to-know and electronic records are controlled by password access. Levels of access will be determined and granted by the System Manager. Only staff members of the Grants Management and Contracts Management have regular access to their Division's paper grant and contract files. Limited access to official grant and contract files is granted to other AHRQ and DHHS staff with need-to-know about AHRQ research projects, only with authorization of the responsible System Manager.

2. Physical safeguards: File servers and database servers are maintained in areas secured by combination lock. Data is backed up from hard drive to magnetic tape daily. Paper records are secured in locked file cabinets. All file cabinets and computer equipment are maintained under general Agency and building security.

3. Procedural safeguards: Access to electronic records by non-AHRQ personnel is through the Systems Manager only. DHHS staff may inspect AHRQ grant and contract records on a need-to-know basis only, with the approval of the responsible System Manager. Visitors are not left unattended in the office containing the files. Grant and contract records are either transmitted in sealed envelopes are hand-carried.

4. Technical safeguards: Initial electronic access is through the AHRQ

local area network which is controlled by password. Subsequent levels of security exist for access to the Agency Management Information System/Grants and Contracts (AMIS/GRANTS and CONTRACTS) system itself and, within the system, individual users are granted appropriate levels of access (read only, read/write) depending upon individual need. Levels of access are granted by the System Manager.

RETENTION AND DISPOSAL:

The complete paper applications and proposals of unfunded grants and contracts will be retired to the Federal Records Retention Center approximately one year after grant or contract closeout date and subsequently disposed of in accordance with the records retention schedule. Paper records of funded grant applications and contracts and their respective files are retained at AHRQ for one year beyond the termination date of the grant or until after the final report is received, whichever is sooner. They are then retired to the Federal Records Center and disposed of twelve years after final payment in accordance with the National Archives and Records Administration General Records Schedule. The pertinent records retention control schedule may be obtained by writing a System Manager at the following address:

SYSTEM MANAGER(S) AND ADDRESS:

For administrative information: AMIS/GRANTS and CONTRACTS Policy-Coordinating Official/ Administrator, 301–427–1439—(Information Technology Help Desk).

For grants information: Grants Management Officer, 301–427–1447.

For contracts information: Contracts Management Officer, 301–427–1780.

All System Managers are located at the following address: Office of Performance, Accountability, Resources and Technology, 540 Gaither Road, Rockville, Maryland 20850.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The requester should specify name or number of grant/contract. The requester must also sign a statement indicating an understanding that the knowing and willful request for acquisition of information from a protected record pertaining to an individual under false pretenses is a criminal offense under the Act, punishable by a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requester should also reasonably specify the record contents being sought. Positive identification of the requester as above is required. Subject individuals may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under the System Manager subheading above and reasonably identify the record, specify the information being contested, and state the corrective action sought and reason(s) for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Grant applications, contractor project directors, reports and correspondence from the research community, and statements from grant review committees; consumer reporting agencies; DHHS System of Records 09–25–0036, Extramural Awards: IMPAC (Grant/Contract/Cooperative Agreement Information), HHS/NIH/DRG.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

No. 09–35–0002.

* * * * *

SYSTEM NAME:

Medical Expenditure Panel Survey (MEPS) and National Medical Expenditure Survey 2 (NMES 2), HHS/ AHRQ/CFACT.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Financing, Access, and Cost Trends, AHRQ, 540 Gaither Road, Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals and members of households selected by probability sampling techniques to be representative of the civilian non-institutionalized population of the United States; health care providers, staff responding on behalf of health insurers and the employers of members of sampled households; (2) residents and next-of-kin of such residents of nursing and personal care homes, selected by probability sampling techniques to be representative of residents of such homes, and facilities and the staff responding on behalf of such facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The incidence of illness and accidental injuries, prevalence of diseases and impairments, the extent of disability, the use, expenditures and sources of payment for health care services, and other characteristics of individuals obtained in household interviews (demographic and socioeconomic characteristics such as age, marital status, education, occupation and family income) and the names, telephone numbers and addresses of the responding staffs of health care providers, health insurers, and employers; (2) the utilization of long-term care, nursing home care, care in personal care homes through data on residents (demographic and social characteristics, health status and charges and sources of payment for care); through data facility characteristics (general characteristics, certification, services offered and corresponding expenses), and through data on next-of-kin or representative of residents (demographic and social characteristics, health status, and expenditures for health care of residents); and (3) Medicare claims records of members of sampled households and of sampled residents of nursing and personal care homes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 913 and 306 of the Public Health Service (PHS) Act (42 U.S.C. 299b–2 and 242k(b)). Sections 924(c) and 308(d) of the PHS Act (42 U.S.C. 299c–3(c) and 242m(d)) provide authority for protecting restrictions on identifiable information about individuals.

PURPOSE(S):

The data are used in aggregated form for statistical and health services research purposes respecting analysis and evaluation of health care costs, and the accessibility, planning, organization, distribution, technology, utilization quality, and financing of health services and systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department has contracted with private firms for the purpose of collecting, analyzing, aggregating, or otherwise refining records in this system. Relevant records are collected by and/or disclosed to such contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, magnetic tapes, CD ROM and secure network servers.

RETRIEVABILITY:

Information can be retrieved by respondent name and address. However, this information is not stored in routinely used analytic files.

SAFEGUARDS:

AHRQ and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Access is limited to persons authorized and needing to use the records, including project directors, contract officers, interviewers, health care researchers and analysts, statisticians, statistical clerks and data entry staff on the staffs of AHRQ and the MEPS contractors.

2. Physical safeguards: The hard-copy records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process identifiable data are located in secured areas and are accessible only to authorized users. Automated back-up files are stored in locked, fire proof safes.

3. Procedural safeguards: All employees of AHRQ and contractor personnel with access to AHRQ records are required, as a condition of employment, to sign an affidavit, acknowledging AHRQ's confidentiality statute and penalty provision and binding themselves to nondisclosure of individually identifiable information. Periodic training sessions are conducted to reinforce the statutorily-based confidentiality restrictions. Actual identifiers are maintained in separate files linked only if there is specific need as authorized by the System Manager. Data stored in computers both at AHRQ and the contractor sites are accessed through the use of passwords/keywords unique to each user and changed at least every 45 days. An automated audit trail will be maintained. Contractors who maintain records in this system are instructed to make no further disclosure of the records other than those requested by AHRQ/CFACT. Privacy Act requirements and the restrictions of 42 U.S.C. 242m(d) are specifically included in contracts for survey, research and data processing activities related to this system. The DHHS project directors, contract officers and project officers oversee compliance with these confidentially and security requirements.

4. These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Hard-copy records will be burned or shredded following verification that such data were correctly entered into a machine readable format.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Survey Operations, CFACT/AHRQ, 540 Gaither Road, Rockville, MD. 20850

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager, giving your full name and address.

RECORD ACCESS PROCEDURES:

The system is exempt from the requirements of the Privacy Act; however, a subject individual may be granted access to his/her records at the System's Manager's discretion. Positive identification is required from anyone seeking such access.

CONTESTING RECORD PROCEDURES:

If access has been granted and some information is being contested, contact the System Manager and reasonably identify the record, specify the contested information, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Respondents in the survey samples including: members of households, physicians, hospitals, health insurers, employers, staff of nursing and personal care homes, the next-of-kin of residents of such homes and facilities, and Systems 09–70–0005, Medicare Bill File (Statistics), HHS/HCFA/BDMS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d)(1) through (4) and (e)(4)(G) and (H), in accordance with the provisions of subsection 552a(k)(4) of the Privacy Act of 1974. This system has been exempted because it contains only records which are required by statute to be maintained and used solely as statistical records.

[FR Doc. 04–7653 Filed 4–2–04; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The National School-based Youth Risk Behavior Survey, OMB No. 0920–0493—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this request is to renew OMB clearance to continue an ongoing biennial survey among high school students attending regular public, private, and Catholic schools in grades 9–12. Data will be collected in the Spring of 2005 and the Spring of 2007 and will assess priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among

both youth and adults in the U.S. OMB clearance for the 2003 YRBS survey expired November 2003, OMB No. 0920–0493. Data on the health risk behaviors of adolescents is the focus of approximately 40 national health objectives in Healthy People 2010. The Youth Risk Behavior Survey provides data to measure at least 10 of these health objectives and 3 of the 10 Leading Health Indicators. In addition, the Youth Risk Behavior Survey can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the 2010 objectives that address behaviors of adolescents. The data also will have significant implications for policy and program development for school health programs nationwide. The estimated annualized burden over the three-year period is 6,115 hours. There is no cost to respondents.

Respondents	Number of respondents (05–07)	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs) (05–07)
High School Students	24,000	1	45/60	18,000
School Administrators	690	1	30/60	345
Total				18,345

Dated: March 29, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7557 Filed 4–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–36]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Syndromic Surveillance Capacity—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Syndromic surveillance is a term used to describe a broad spectrum of activities intended to detect a disease outbreak earlier than traditional reportable disease surveillance. These activities involve the collection and analysis of multiple types of data indicating prodromal signs and symptoms of disease. These data generally precede diagnosis or laboratory confirmation.

It is estimated that as many as 100 State or local health departments have begun collecting one or more types of syndromic data to enhance their early detection capabilities. CDC provides support to State and local health departments in the form of surveillance expertise, analytical methods, and information technology. In order to assess the use and effectiveness of the various types of syndromic surveillance being piloted at the State and local level, CDC must collect information on the types and number of data sources, methods of collection and analysis, time requirements, personnel requirements, and evaluations performed.

This project will consist of a web-based questionnaire available to predetermined State and local health departments. Answers to ten multiple-choice questions with pull-down menus will be solicited. CDC will analyze the responses and use the information to facilitate coordination and planning of syndromic surveillance systems at the State and local level. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
1	100	10	6/60	100
Total				100

Dated: March 29, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7558 Filed 4–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–37]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Program Evaluation and Monitoring System for Health Departments and Community-Based Organizations—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The purpose of this data collection is to collect HIV prevention evaluation data from health department and directly funded community-based organization (CBO) grantees using the electronic Program Evaluation and Monitoring System (PEMS). This proposed data collection will incorporate data elements from two currently approved data collections: Evaluating CDC Funded Health Department HIV Prevention Programs, OMB No. 0920–0497; and Assessing the Effectiveness of CBOs for the Delivery of HIV Prevention Programs, OMB No. 0920–0525.

CDC needs non-identifying, client-level, standardized evaluation data from health department and CBO grantees to: (1) More accurately determine the extent to which HIV prevention efforts have been carried out by assessing what types of agencies are providing services, what resources are allocated to those services, to whom services are being provided and how these efforts have contributed to a reduction in HIV transmission; (2) improve ease of reporting to better meet that goal; and (3) be accountable to stakeholders by informing them of efforts made and use of funds in HIV prevention nationwide.

Although CDC receives evaluation data from grantees, the data received to date is insufficient for evaluation and accountability. Furthermore, there has not been standardization of required evaluation data from both health departments and CBOs. Changes to the evaluation and reporting process have become necessary to ensure CDC receives standardized, accurate, thorough evaluation data from both health department and CBO grantees. For these reasons, CDC developed PEMS and consulted with representatives from health departments, CBOs, and the National Alliance of State and Territorial AIDS Directors during the development of PEMS.

Respondents will report general agency information; program model and budget; intervention plan and delivery characteristics; and client demographics and behavioral characteristics. After initial set-up of the PEMS, data collection will include searching existing data sources, gathering and maintaining data, document compilation, review of data, and data entry into a web-based system. Respondents will submit data quarterly. It is estimated that this process will take each health department 99 hours per quarter, and community-based organizations will take approximately 67 hours per quarter. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health Departments	65	4	99	25,740
CBOs	150	4	67	40,200
Total				65,940

Dated: March 26, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7559 Filed 4–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–05)

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Illinois Department of Public Aid (IDPA). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an

opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. *See* **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Mike McElliott, Government Task Leader, Centers for Medicare & Medicaid Services, Division of Medicare Financial Management, Program Integrity Branch, 233 N. Michigan Avenue, 6th Floor, Chicago, Illinois 60601. The telephone number is (312) 353–1754 and e-mail is *mmcelliott@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–05

NAME:

"Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the Illinois Department of Public Aid (IDPA) for Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

Centers for Medicare & Medicaid Services, and Illinois Department of Public Aid.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 **Federal Register** (FR) 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with fiscal intermediaries to "make such audits of the records of providers as may be necessary to ensure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h(a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, § 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd). The contracting entities are called Program Safeguards Contractors (PSC).

IDPA is charged with the administration of the Medicaid program in Illinois and is the single state agency for such purpose (Illinois Public Aid Code (ILPAC) 305 Illinois Combined Statutes (ILCS) 5/5–1 *et seq.*). IDPA may act as an agent or representative of the Federal government for any purpose in furtherance of IDPA's function or administration of the Federal funds granted to the state. ILPAC 305 ILCS 5/1–1 *et seq.* In Illinois, the Medical Assistance Program provides qualifying individuals with health care related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law (ILPAC 305 ILCS 5/5–1 *et seq.*).

IDPA 's disclosure of the Medicaid/IDPA data pursuant to this agreement is for purposes directly connected with the administration of the Medicaid program, in compliance with Illinois Public Aid Code sections 11–9 and 12–13.1 (305 ILCS 5/11–9 and 5/12–13.1). Those

purposes are the detection, prosecution and deterrence of F&A in the Medicaid program.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will conduct a computer matching program with the Illinois Department of Public Aid (IDPA) to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the State of Illinois. CMS and IDPA will provide a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of Illinois expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and IDPA to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of Illinois against records of Medicaid recipients, practitioners, providers, and suppliers in the State of Illinois.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The data for CMS are maintained in the following Systems of Records: National Claims History (NCH), System No. 09–70–0005 was most recently published in the **Federal Register**, at 67 FR 57015 (September 6, 2002). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 67 FR 3203 (January 23, 2002). Matched data will be released to IDPA pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09–70–0503 published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, was most recently published in the **Federal Register** at 53 FR 50584 (Dec 16, 1988). Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09–70–0536 published in the **Federal Register** at 67 FR 63392 (December 6, 2001). Matched data will be released to IDPA pursuant to the routine use as set forth in the system notice.

Medicaid data are maintained within the IDPA Medical Data Warehouse. The warehouse includes claims history, beneficiary eligibility and identification data, and provider eligibility and identification data. IDPA may change file formats after giving reasonable notice to the Custodian.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner, than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7623 Filed 4–2–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–06)

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the New Jersey Division of Medical Assistance and Health Services (DMAHS). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. *See* **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Lourdes Grindal Miller, Health Insurance Specialist, Centers for Medicare & Medicaid Services, Office of Financial Management, Program Integrity Group, Mailstop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone

number is (410) 786–1022 and e-mail is *lgrindalmiller@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law(Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–06

NAME:

"Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the State of New Jersey Division of Medical Assistance and Health Services (DMAHS) for Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and State of New Jersey Division of Medical Assistance and Health Services.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C. 552a), (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with fiscal intermediaries to "make such audits of the records of providers as may be necessary to ensure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h(a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, section 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd). The contracting entities are called Program Safeguards Contractors (PSC).

DMAHS is charged with the administration of the Medicaid program in New Jersey and is the single state agency for such purpose (New Jersey Statutes Annotated (N.J.S.A.) § 30:4D–5). DMAHS may act as an agent or representative of the Federal government for any purpose in furtherance of DMAHS's functions or administration of the Federal funds granted to the state. In New Jersey, DMAHS provides qualifying individuals with health care and related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law. The program to provide all such services is known as the New Jersey Medical Assistance Program (NJMAP).

DMAHS's disclosure of data pursuant to this agreement is for purposes directly connected with the administration of the Medicaid Program, in compliance with N.J.S.A. § 30:4D–7g, New Jersey Administrative Code 10:49–9.7(b), 42 U.S.C. 1396a(a)(7), 42 CFR 431.300 *et seq.*, and 45 CFR 205.50–205.60, and other applicable statutes and regulations. Those purposes are the detection, prosecution and deterrence of fraud and abuse (F&A) in the Medicaid program, and the enforcement of state law relating to the provisions of program services.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will conduct a computer matching program with the State of New Jersey, Department of Human Services (NJDHS), Division of Medical Assistance and Health Services (DMAHS) to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the State of New Jersey. CMS and NJDHS will provide Electronic Data Systems Corporation, a CMS contractor (hereinafter referred to as the "Custodian"), with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of New Jersey

expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and DMAHS to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of New Jersey against records of New Jersey Medicaid beneficiaries, practitioners, providers, and suppliers in the State of New Jersey.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The release of the data for CMS are maintained in the following SOR: National Claims History (NCH), System No. 09–70–0005 was most recently published in the **Federal Register**, at 67 FR 57015 (September 6, 2002). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 67 FR 3203 (January 23, 2002). Matched data will be released to DMAHS pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09–70–0503 published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, was most recently published in the **Federal Register** at 53 FR 50584 (December 16, 1988). Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09–70–0536 published in the **Federal Register** at 67 FR 63392 (December 6, 2001). Matched data will be released to DMAHS pursuant to the routine use as set forth in the system notice.

The data for DMAHS are maintained in the following data files: The data that the New Jersey Medicaid Program resides primarily on the Mainframe computer system of the UNISYS, the Fiscal Agent for the Medicaid Program. This data includes not only eligibility, and claims data, but also all other data necessary to process the claim such as client, provider, and reference information. DMAHS also maintains a shared Data Warehouse that contains five years of claims activity records in an Oracle relational database. Data from the Fiscal Agent is transmitted monthly to the shared Data Warehouse for use in reporting, analysis and decision support. All or part of these elements may be used in this data-matching program.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7629 Filed 4–2–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–01)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the North Carolina Health and Human Services (NCDHHS), Division of Medical Assistance (DMA). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See "Effective Dates" section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kathleen McCracken, Health Insurance Specialist, Centers for Medicare & Medicaid Services, Office of Financial Management, Program Integrity Group, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone number is 1–410–786–7487 and e-mail is *kmccracken@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–01

NAME:

"Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the State of North Carolina Department of Health and Human Services (NCDHHS), Department of Medical Assistance (DMA) for Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and State of North Carolina Department of Health and Human Services

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This agreement provides for information matching fully consistent with the authority of the Secretary of HHS (Secretary). Section 1816 of the Act permits the Secretary to contract with fiscal intermediaries to "make such audits of the records of providers as may be necessary to insure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h)(a)).

Section 1842 of the Social Security Act (the Act) provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, § 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing technologies that surpass the capabilities of existing Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd)). The contracting entities are called Program Safeguards Contractors (PSC).

NCDHHS, acting through DMA, is charged with the administration of the Medicaid program in North Carolina and is the single state agency for such purpose. DMA may act as an agent or representative of the Federal government for any purpose in furtherance of DMA's functions or administration of the Federal funds granted to the state. The North Carolina General Statutes, Chapter 108A, Part 6, authorizes DMA to establish a Medical Assistance Program and to authorize payments of all or part of the cost of medical and other remedial care for eligible persons.

DMA's disclosure of the Medicaid data pursuant to this agreement is for purposes directly connected with the administration of the Medicaid program, specifically, the detection, prosecution and deterrence of fraud and abuse (F&A) in the Medicaid program.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which CMS will conduct a computer matching program with NCDHHS, DMA, to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the State of North Carolina. CMS and DMA will provide a CMS contractor, AdvanceMed, a CSC Company (hereinafter referred to as the "Custodian"), with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of North Carolina expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and DMA to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of North Carolina against records of North Carolina Medicaid beneficiaries, practitioners, providers, and suppliers in the State of North Carolina.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM—CMS SYSTEMS OF RECORDS (SOR):

The release of the data for CMS are maintained in the following SOR:

National Claims History (NCH), System No. 09–70–0005 was most recently published in the **Federal Register**, at 67 FR 57015 (September 6, 2002). NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study

the operation and effectiveness of the Medicare program. Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 67 FR 3203 (January 23, 2002). Matched data will be released to DMA pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09–70–0503 published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, was most recently published in the **Federal Register** at 53 FR 50584 (Dec 16, 1988). Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09–70–0536 published in the **Federal Register** at 66 FR 63392 (December 6, 2001). Matched data will be released to DMA pursuant to the routine use as set forth in the system notice.

DMA data are maintained in the following data files: "Medicaid RFF035 File Paid Claims," "Medicaid Combined Provider Master File," and "Medicaid Eligibility File."

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7631 Filed 4–2–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–03)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Florida Agency for Health Care Administration (AHCA). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Lourdes Grindal Miller, Health Insurance Specialist, Centers for Medicare & Medicaid Services, Office of Financial Management, Program Integrity Group, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone number is 410–786–1022 and e-mail is *lgrindalmiller@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–03

NAME:

Computer Matching Agreement (CMA) Between the Centers for Medicare & Medicaid Services (CMS) and the State of Florida Agency for Health Care Administration (AHCA) titled "Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and State of Florida Agency for Health Care Administration.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (5 U.S.C. 552a), (as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with fiscal intermediaries to "make such audits of the records of providers as may be necessary to insure that proper payments are made under this part," and to "perform such other functions as are necessary to carry out this subsection" (42 U.S.C. 1395h (a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "to otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, section 1874(b) of the Act authorizes the Secretary to contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd)). The contracting entities are called Program Safeguards Contractors.

Pursuant to § 409.902, Florida Statutes (F.S.), AHCA is charged with the administration of the Medicaid program in Florida, and is the single state agency for such purpose. AHCA is required to operate a program to oversee the activities of Florida Medicaid recipients and providers to ensure that fraudulent and abusive behavior occurs to the minimum extent possible (§ 409.913, F.S.).

AHCA's disclosure of the Medicaid data pursuant to this agreement is for purposes directly connected with the administration of the Medicaid program, in compliance with 42 CFR 431.300 through 431.307. Those purposes are the detection, prosecution and deterrence of F&A in the Medicaid program.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which CMS will conduct a computer matching program with AHCA to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the State of Florida. CMS and AHCA will provide TriCenturion, a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the State of Florida expected to be identified in this matching program: (1) Billing for provisions of more than 24 hours of services in one day, (2) providing treatment and services in ways more statistically significant than similar practitioner groups, and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This Computer Matching Program will enhance the ability of CMS and AHCA to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the State of Florida against records of Florida Medicaid beneficiaries, practitioners, providers, and suppliers in the State of Florida.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The data for CMS are maintained in the following Systems of Records:

National Claims History (NCH), System No. 09–70–0005 was most recently published in the **Federal Register,** at 67 FR 57015 (September 6, 2002.) NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Carrier Medicare Claims Record, System No. 09–70–0501 published in the **Federal Register** at 67 FR 54428 (August 22, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Enrollment Database, System No. 09–70–0502 (formerly known as the Health Insurance Master Record) published at 67 FR 3203 (January 23, 2002). Matched data will be released to AHCA pursuant to the routine use set forth in the system notice.

Intermediary Medicare Claims Record, System No. 09–70–0503 published in the **Federal Register** at 67 FR 65982 (October 29, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Unique Physician/Provider Identification Number (formerly known as the Medicare Physician Identification and Eligibility System), System No. 09–70–0525, was most recently published in the **Federal Register** at 53 FR 50584 (December 16, 1988). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Medicare Supplier Identification File, System No. 09–70–0530 was most recently published in the **Federal Register**, at 67 FR 48184 (July 23, 2002). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

Medicare Beneficiary Database, System No. 09–70–0536 published in the **Federal Register** at 67 FR 63392 (December 6, 2001). Matched data will be released to AHCA pursuant to the routine use as set forth in the system notice.

The data for AHCA are maintained in the following data files:

Claims File Layouts HIPAA Version
Download File Record File-Claims
Recipient File Layout
Provider File Layout

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7632 Filed 4–2–04; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2003–04)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with the Pennsylvania Department of Public Welfare (DPW). We have provided background information about the proposed Matching Program in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed Matching Program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 23, 2004. We will not disclose any information under a Matching Agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this Matching Program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Phillip Kauzlarich, Health Insurance Specialist, Centers for Medicare & Medicaid Services, Office of Financial Management, Program Integrity Group, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone number is (410) 786–7170 and e-mail is *pkauzlarich@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: March 23, 2004.

Dennis Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Computer Match No. 2003–04

NAME:

"Computer Matching Agreement Between the Centers for Medicare & Medicaid Services (CMS) and the Commonwealth of Pennsylvania, Department of Public Welfare (DPW) for Disclosure of Medicare and Medicaid Information."

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and Commonwealth of Pennsylvania, Department of Public Welfare

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 5 U.S.C. 552a, (as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 FR 77677 (December 12, 2000), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (Secretary). Section 1816 of the Social Security Act (the Act) permits the Secretary to contract with fiscal intermediaries "to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part," and "to perform such other functions as are necessary to carry out this subsection." (42 U.S.C. 1395h(a)).

Section 1842 of the Act provides that the Secretary may contract with entities known as carriers to "make such audits of the records of providers of services as may be necessary to assure that proper payments are made" (42 U.S.C. 1395u(a)(1)(C)); "assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits" (42 U.S.C. 1395u(a)(2)(B)); and "otherwise assist * * * in discharging administrative duties necessary to carry out the purposes of this part" (42 U.S.C. 1395u(a)(4)).

Furthermore, section 1874(b) of the Act authorizes the Secretary to "contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions" under this title (42 U.S.C. 1395kk(b)).

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass the existing capabilities of Fiscal Intermediaries and carriers (42 U.S.C. 1395ddd). The contracting entities are called Program Safeguards Contractors (PSC).

DPW is charged with the administration of the Medicaid program in Pennsylvania and is the single state agency for such purpose. 62 Purdon's Statutes (P.S.) § 201(1); 55 Pennsylvania (Pa.) Code § 101.1(e). In Pennsylvania, DPW provides qualifying individuals with health care and related remedial or preventive services, including both Medicaid services and services authorized under state law that are not provided under Federal law. The program to provide all such services is known as the Medical Assistance (MA) Program.

DPW's disclosure of the MA Program data pursuant to this Agreement is for purposes directly connected with the administration of the MA Program, in compliance with 62 P.S. § 404, 55 Pa. Code §§ 105.1 *et seq.*, 42 U.S.C. 1396a(a)(7), 42 CFR 431.300 *et seq.*, and 45 CFR 205.50–205.60. Those purposes include the investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of the MA Program. (55 Pa. Code § 105.3(b)(2)).

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this Agreement is to establish the conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will conduct a computer matching program with the Commonwealth of Pennsylvania, Department of Public Welfare (DPW), to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid fraud and abuse (F&A) in the Commonwealth of Pennsylvania. CMS and DPW will provide Electronic Data Systems (EDS), a CMS contractor (hereinafter referred to as the "Custodian"), with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information into a single database. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices requiring further investigation. The following are examples of the type of aberrant practices that may constitute F&A by practitioners, providers, and suppliers in the Commonwealth of Pennsylvania expected to be identified in this matching program: (1) Billing for provision of more than 24 hours of services in one day; (2) providing treatment and services in ways more statistically significant than similar practitioner groups; and (3) up-coding and billing for services more expensive than those actually performed.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This CMP will enhance the ability of CMS and DPW to detect F&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the Commonwealth of Pennsylvania against records of Pennsylvania Medicaid beneficiaries, practitioners, providers, and suppliers in the Commonwealth of Pennsylvania.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The data for DPW are maintained in the following data files:

The data the Pennsylvania Fraud and Abuse Detection System (FADS) receives consists of a number of data tables that contain the different data element requirements for the operation of the system. These tables are grouped into "universes" of data. In Phase I the FADS universes are: Claims Analysis, Provider, Recipient, Reference, and Code Tables. In Phase II they are: Claims Analysis, Provider, Recipient, Reference, Financial, and Managed Care.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–7633 Filed 4–2–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Community Food and Nutrition Program—Discretionary Grants; Office of Community Services

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–EN–0007.

CFDA Number: 93.571.

Due Date for Applications: Due date for receipt of applications is June 4, 2004.

I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities that will result in direct benefits targeted to low-income people. This program announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, (The Act) (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), Community Food and Nutrition Program. The Act authorizes the Secretary to award grants on a competitive basis to eligible entities for community-based, local and statewide and national programs including programs benefiting Indians (as defined in section 677(e) of the CSBG Act) and migrant farm workers.

The main objective of the CFNP is to link low-income people to food and nutrition programs. Grant funds are provided to: (1) Coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals. The OCS views this program as a capacity building program, rather than a food delivery program.

The Office of Community Services encourages eligible applicants with programs addressing obesity to submit applications. Eligible applicants with programs benefiting Native Americans and migrant or seasonal farm workers are also encouraged to submit applications. Faith-based and

community-based organizations reaching underserved populations are also eligible to apply.

Definitions of Terms

The following definitions apply:

Budget Period—The interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Capacity-Building—Refers to activities that assist eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, adding or refining a program component or replicating techniques or a program piloted in another local community, or making other cost effective improvements.

Displaced Worker—An individual who is in the labor market but has been unemployed for six months or longer.

Eligible Entity—Public and private non-profit agencies, including organizations benefiting Indians and migrant and seasonal farmworkers. Faith-based organizations are eligible to apply for these Community Food and Nutrition Program grants. Community-based organizations are eligible to apply for these Community Food and Nutrition Program grants.

Empowerment Zone and Enterprise Communities—Those communities designated as such by the Secretary of Agriculture or the Secretary of Housing and Urban Development.

Indian Tribe—A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides, or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization.

Innovative Project—One that departs from, or significantly modifies, past program practices and tests a new approach.

Migrant Farm Worker—An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Poverty Income Guidelines—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://www.hhs.aspe.gov/poverty/*

Program Income—Gross income earned by the grant recipient that is generated by an activity supported with grant funds.

Project Period—The total time for which a project is approved for support, including any approved extensions.

Seasonal Farm Worker—Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Self-Sufficiency—A condition where an individual or family does not need, and is not eligible to receive, TANF assistance under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act.)

Underserved Area—(as it pertains to child nutrition programs)—A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Non-profit Organization—refers to an organization, including faith-based and community-based organization, which meets the requirement for proof of non-profit status in the "Additional Information on Eligibility" section of this announcement and has demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Territories—refers to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Program Purpose, Scope and Focus

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of all individuals, including low-income persons, through improved preventive health care and promotion of personal responsibility.

DHHS also recognizes that improving the health and nutrition status of low-income persons can also be improved by access to healthy, nutritious foods or by other means. DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

Projects funded under this program must focus on one or more legislatively-mandated program activities: (a) Coordination of private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (b) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating such programs in unserved or underserved areas; and (c) development of innovative approaches at the state and local level to meet the nutrition needs of low-income individuals.

Additionally, in carrying out such activities, projects funded under this program should (1) be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people; (2) provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally-assisted programs; (3) carry out targeted communications and social marketing to improve dietary behavior and increase program participation among eligible low-income populations. Populations to be targeted can include displaced workers, elderly people, children, and the working poor, and (4) consult with and/or inform local officials that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in planning grant applications.

The OCS views this program as a capacity-building program, rather than a food delivery program. Applications proposing to use OCS funds solely to purchase food for low-income individuals may be considered non-responsive and be returned to the applicant without further review.

Mobilization of Resources

There is no match requirement for the Community Food and Nutrition Program. However, OCS would like to mobilize as many resources as possible to enhance projects funded under the CFNP. OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

Administrative Costs/Indirect Costs

There is no predetermined administrative cost ceiling for projects funded under this program. Indirect costs consistent with approved indirect

cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

Multiple Submittals

There is no limit to the number of applications that can be submitted by an eligible applicant as long as each application is for a different project. However, no applicant will receive more than one grant.

Repeat Grantee

Applicants receiving OCS funds for CFNP projects completed within the last five (5) years must submit with the application an abstract for each such project. The abstract should include the applicant's name, address, CFNP grant number and amount, the title of the project, and a summary of accomplishments. An application that does not include an abstract for each project previously funded may be considered non-responsive and be returned to the applicant without further review.

Priority Area:

There is one Program Priority Area for Fiscal Year 2004: Priority Area 1.0—General Projects, under which OCS will accept applications as described below.

Priority Area 1.0—General Projects

The application should describe the target area and population to be served and discuss the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is sound and feasible. Projects funded under this announcement must produce lasting and measurable results that fulfill the purposes of this program as described above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines. The guideline information is posted on the Internet at the following address: *http://www.hhs.aspe.gov/poverty/*. Failure to comply with the DHHS Poverty Income Guidelines may result in the application not being considered for funding.

If an applicant proposes a project that will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to DHHS.

When projects propose to mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, when projects propose to provide direct assistance to beneficiaries through grants funded under this program, those beneficiaries must fall within the official DHHS Poverty Income Guidelines.

Applications proposing the use of grant funds to develop printed or visual materials must contain convincing evidence that these materials are not available from other sources. The OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. When material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in the Program Purpose, Scope and Focus section of this announcement.

II. Award Information

Funding Instrument Type: Service Grant.

Anticipated Total Priority Area Funding: $2,400,000.

Anticipated Number of Awards: 48–52.

Ceiling on Amount of Individual Awards: $50,000.

An application that exceeds $50,000 will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: $50,000.

Project Period for Grants: 12 Months.

III. Eligibility Information

1. Eligible Applicants

Nonprofits having a 501 (c) (3) status with the IRS, other than institutions of higher education Nonprofits that do not have a 501 (c) (3) status with the IRS, other than institutions of higher education

Additional Information on Eligibility

Eligible applicants are public and private nonprofit agencies including organizations benefiting Indians and migrant and seasonal farmworkers with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated in the announcement. Faith-based organizations and community-based organizations are eligible to apply for these Community Food and Nutrition Program grants. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

The Office of Community Services encourages eligible applicants with programs addressing obesity to submit applications. Eligible applicants with programs benefiting Native Americans and migrant or seasonal farm workers are also encouraged to submit applications. Faith-based and community-based organizations reaching underserved populations are also encouraged to apply.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

2. Cost Sharing or Matching

Cost sharing or matching funds are not required for applications submitted under this program announcement.

3. Other

All applicants must have a Dun & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

IV. Application and Submission Information

1. Address to Request Application Package

Catherine Rivers, Administration for Children and Families, Office of Community Services' Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Email: *OCS@lcgnet.com* Attention: Catherine Rivers, Telephone: 1–800–281–9519.

2. Content and Form of Application Submission

1. Application Content

An original and two copies of each application are required. Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

3. Completed Standard Form 424—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

6. Project Narrative—A narrative that addresses issues described in the "Application Review Information" section of this announcement.

2. Application Format

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

3. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

4. Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke.

3. Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standarad Time (EST) on June 4, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services' Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler-Johnson. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services' Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler-Johnson between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Barbara Ziegler-Johnson". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Pre-applications or letters of intent will not be accepted.

REQUIRED FORMS

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	Do.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	Do.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	Do.
Narrative Budget Justification	As described above	Consistent with guidance in "Application Format" section of this announcement.	Do.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" section of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	Do.
Completed Standard Form 424B	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	Do.
Certification Regarding Lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	Do.
Certification Regarding Environmental Tobacco Smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	Do.

Additional Forms:

Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" for Applicants".

Survey for Private, Non-Profit Grant Applicants.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-five jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Signed SF–424, SF–424A, and SF–424B

The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement.

Proof of Non-Profit Status

The application must contain documentation of the applicant's tax-exempt status as indicated in the "Additional Information on Eligibility" section of this announcement.

Project Narrative

The application must include a project narrative that meets requirements set forth in this announcement.

Capacity-Building Program

The OCS views this program as a capacity-building program, rather than a food delivery program. Applications proposing to use OCS funds solely to purchase food for low-income individuals may be considered non-responsive and be returned to the applicant without further review.

Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by DHHS. The guideline information is posted on the Internet at the following address: *http://www.hhs.aspe.gov/poverty/*. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

No other government agency or privately defined poverty guidelines are applicable to determining low-income eligibility for this OCS program.

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project. Applications not complying with this requirement will be considered "non-responsive" and be returned to the applicant without further review.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement

Maximum Grant Amount

An application that exceeds $50,000—the ceiling on the amount of an individual award—will be considered "non-responsive" and be returned to the applicant without further review.

Repeat Grantee

Applicants receiving OCS funds for CFNP projects completed within the last five (5) years must submit with the application an abstract for each such project. The abstract should include the applicant's name, address, CFNP grant number and amount, the title of the project, and a summary of accomplishments. An application that does not include an abstract for each project previously funded may be considered non-responsive and be returned to the applicant without further review.

6. Other Submission Requirements

Electronic Copy Address Submission

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number (93.571).

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Public Law 104–13): Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain

information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB No. 0970–0139.

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information. The project description is approved under OMB control #0970–0139 which expires 3/31/04.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criterion I. Results or Benefits Expected (Maximum: 30 points)

I(a) Improvement in Nutrition Services to Low-Income People (0–15 Points)

The application will be evaluated on the extent to which it proposes to significantly improve or increase nutrition services to low-income people and indicate how such improvements or increases are quantified.

I(b) Promotional Health and Social Service Activities Included in Nutrition Services (0–5 Points)

The application will be evaluated on the extent to which it incorporates into

the project awareness of health and social services activities for low-income people along with nutritional services.

I(c) Commitment of Resources (0–5 Points)

The application will be evaluated on the extent to which it indicates that the project will significantly leverage or mobilize other community resources. These resources are detailed and quantified.

I(d) One Time Funding (0–5 Points)

The application will be evaluated on the extent to which it demonstrates either that the project addresses problem(s) that can be resolved by one-time OCS funding, or demonstrates that non-Federal funding is available to continue the project without Federal support.

In addressing the above criterion, the application must include quantitative data for items (a), (b), and (c), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in the Program Purpose, Scope and Focus section of this announcement, and the problems and/or needs described under Criterion I.

Evaluation Criterion II. Approach (Maximum: 25 points)

II(a) Realistic Quarterly Time Lines (0–10 Points)

The application will be evaluated on the extent to which it provides realistic quarterly projections of the activities to be carried out including the projected number of beneficiaries to be served each quarter.

II(b) Detailed Work Plan (0–15 Points)

The application will be evaluated on the extent to which it ensures that activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs. In addressing this criterion, the application should address the basic criteria and other mandated activities found in Parts A and B and should include:

(1) Project priorities, and rationale for selecting them, which relate to the specific nutritional problem(s) and/or need(s) of the target population identified under Criterion I;

(2) Goals and objectives that speak to the problem(s) and/or need(s); and

(3) Project activities that, if successfully carried out, can reasonably be expected to result in achieving these goals and objectives.

Evaluation Criterion III. Organizational Profiles (Maximum: 15 points)

III(a) Organizational Experience in Program Area (0–5 Points)

The application will be evaluated on the extent to which it documents the organization's capability and relevant experience in developing and operating programs that deal with poverty problems similar to those to be addressed by the proposed project. Documentation provided should indicate that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations proposing training and technical assistance should have detailed competence in the program area and expertise in training and technical assistance. If applicable, information provided in these applications should also address related achievements and competence of each cooperating or sponsoring organization.

III(b) Management History (0–5 Points)

The application will be evaluated on the extent to which it demonstrates the applicant's ability to implement sound and effective management practices. If the applicant has been a recipient of other Federal or other governmental grants, it must also document their compliance with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement from a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

III(c) Staff Skills, Resources and Responsibilities (0–5 Points)

The application will be evaluated on the extent to which it adequately describes the experience and skills of the proposed Project Director, showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to successfully implement the project. If the key staff person has not yet been identified, the application should contain a comprehensive position description indicating that the responsibilities to be assigned to the Project Director are relevant to successfully implement the project. The application must indicate that it has adequate facilities and resources (*i.e.* space and equipment) to carry out the work plan successfully.

In addressing the above criterion, the application must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely project implementation and oversight and that the assigned responsibilities of the staff are appropriate to the tasks identified.

Evaluation Criterion IV. Objectives and Need for Assistance (Maximum: 10 points)

IV(a) Description of Target Population. (0–4 Points)

The application will be evaluated on the extent to which it describes the target area and population to be served, including specific details on any minority population(s) to be served.

IV(b) Analysis of Needs/Priorities (0–6 Points)

The application will be evaluated on the extent to which it discusses the nature and extent of the problem(s) and/or need(s), including specific information on minority population(s).

Evaluation Criterion V. Approach: Coordination/Services Integration (Maximum: 10 Points)

V(a) Coordinated Community-Based Planning (0–5 Points)

The application will be evaluated on the extent to which it demonstrates evidence of coordinated community-based planning in its development, including strategies in the work program to collaborate with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example: (a) Unite funding streams at the local level to increase program outreach and effectiveness; (b) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients; or (c) bring project participants into direct interaction with holistic family development resources in the community where needed.

V(b) Community Empowerment Consideration (0–5 Points)

Special consideration will be given to applications located in areas characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. The application will be evaluated on the extent to which it

documents involvement in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner. If the applicant is receiving funds from the State for community food and nutrition activities, the application should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, the application should specifically describe their usage.

Evaluation Criterion VI. Budget and Budget Justification (Maximum: 10 Points)

VI(a) Budget and Budget Justification (0–10 Points)

Every application must include a Budget Justification, placed after the budget forms SF–424 and 424A, explaining the sources and uses of project funds. The budget is adequate and administrative costs are appropriate to the services proposed.

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

(a) The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the "Additional Information on Eligibility" section of this announcement.

(d) The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement. An application package that exceeds the page limitation will be considered "non-responsive" and be returned to the applicant without further review.

(e) An application that exceeds $50,000—the ceiling on the amount of an individual award—will be considered "non-responsive" and be returned to the applicant without further review.

(f) Private, non-profit organizations are encouraged to submit with their applications the optional survey located under "Grants Manuals & Forms" at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

3. *Anticipated Announcement and Award Dates:* 90 days after the due date of applications.

VI. Award Administration Information

1. *Award Notices:* Successful applicants will be notified through the issuance of a Financial Assistance Award notice that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, the budget period for which initial support is given, and the total project period for which support is provided. The Financial Assistance Award will be signed by a Grants Officer and transmitted via postal mail. Unsuccessful applicants will be notified in writing by ACF.

2. *Administrative and National Policy Requirements:* 45 CFR Part 74.

Special Terms and Conditions of Awards: None.

3. Reporting Requirements

Programmatic Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Financial Reports: Semi-annually and a final report is due 90 days after the end of the grant period.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Catherine Rivers, Administration for Children and Families, Office of Community Services' Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Email: *OCS@lcgnet.com*. Attention: Catherine Rivers, Telephone: 1–800–281–9519.

Grants Management Office Contact: Barbara Ziegler-Johnson, Office of Grants Management, Division of

Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002. Email: *OCS@lcgnet.com*. Telephone: 1–800–281–9519.

VIII. Other Information

Additional Information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: March 30, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–7609 Filed 4–2–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0132]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for premarket approval of medical devices.

DATES: Submit written or electronic comments on the collection of information by June 4, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices—21 CFR Part 814 (OMB Control Number 0910–0231)—Extension

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth the requirements for premarket approval of certain class III medical devices. Class III devices are either preamendments devices that have been classified into class III, postamendments devices which are not substantially equivalent to a preamendments device, or transitional devices. Class III devices are devices such as implants, life sustaining or life supporting devices, or devices which otherwise present a potentially unreasonable risk of illness or injury, or are of substantial importance in preventing impairment of human health. Most premarket approval application (PMAs) are for postamendments class III devices.

Under section 515 of the act, an application must contain several pieces of information including full reports of all information concerning investigations showing whether the device is reasonably safe and effective. The application should also include a statement of components, ingredients, and properties and of the principle or principles of operation of such a device and should also include a full description of the methods used in, and the facilities and controls used for the manufacture and processing of the device; and labeling specimens.

The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a PMA for a class III medical device and the criteria FDA employs in approving, denying, or withdrawing approval of a PMA and supplements to PMAs. The regulation's purpose is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for certain class III (premarket approval) medical devices. The regulations contained in part 814 facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also ensure the disapproval of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval.

The Food and Drug Modernization Act of 1997 (FDAMA) (Public Law 105–115) was enacted on November 21, 1997, to implement revisions to the act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several provisions of this act affect the PMA process, such as section 515(d)(6) of the act. This section provided that PMA supplements were required for all device changes that affect safety and effectiveness of a device unless such changes are modifications to manufacturing procedures or method of manufacture. This type of manufacturing change requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

To make the PMA process more efficient, in the past 3 years FDA has done the following: Made changes to the PMA program based on comments received, complied with changes to the program mandated by FDAMA, and worked towards completion of its PMA reinvention efforts.

Respondents to this information collection are persons filing a PMA application or a PMA supplement with FDA for approval of certain class III medical devices. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include entities meeting the definition of manufacturers such as manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments). Additionally, hospitals that reuse single use devices (SUDs) are also included in the definition of manufacturers. It is expected that FDA will receive four PMA applications from hospitals that remanufacture SUDs annually. This figure has been included in table 1 of this document, as part of the reporting burden in § 814.15.

The total estimated reporting and recordkeeping burden for this information collection is 113,464 hours. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDAMA Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15, 814.20, and 814.37	64	1	64	837	53,568
814.39(f)	581	1	581	66	33,346
814.82	45	1	45	135	6,075
814.84	45	1	45	10	450
Section 201 (FDAMA)	10	1	10	10	100
Section 202 (FDAMA)	15	1	15	10	150
Section 205 (FDAMA)	8	1	8	50	400
Section 208 (FDAMA)	26	1	26	30	780
Section 209 (FDAMA)	8	1	8	40	320
Totals					95,189

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	1,075	1	1,075	17	18,275
Totals					18,275

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The industry-wide burden estimate for PMAs is based on an FDA actual average fiscal year (FY) annual rate of receipt of 64 PMA original applications and 581 PMA supplements, using FY 1998 through 2002 data.

The burden data for PMAs is based on data provided by manufacturers by device type and cost element in an earlier study. The specific burden elements for which FDA has data are as follows:

- *Clinical investigations*: 67 percent of total burden estimate;
- *Submission of additional data or information to FDA during a PMA review*: 12 percent;
- *Additional device development cost (e.g., testing)*: 10 percent; and
- *PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data*: 11 percent.

Paperwork Burden Estimate

The burden estimates were derived by consultation with FDA and industry personnel. FDA's estimates are based on actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals.

Reporting/Disclosure

The reporting burden can be broken out by certain sections of the PMA regulation as follows:

- § 814.15—*Research conducted outside the United States*
- § 814.20 —*Application*
- § 814.37—*PMA amendments and resubmitted PMAs*

The majority of the burden—53,568 burden hours—is due to the previously listed three requirements. Included in these three requirements are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 64 manufacturers (including hospital remanufacturers of single use devices) will be affected by these requirements based on actual average FDA receipt of new PMA applications in FY 1998 through 2002. FDA's estimate of the hours per response (837) was derived through FDA's experience and consultation with industry and trade associations. Included in these three requirements are the conduct of laboratory and clinical trails as well as the analysis, review, and physical preparation of the PMA application. In addition, FDA has based its estimate on the results of an earlier study that these requirements account for the bulk of the burden identified by manufacturers.

- § 814.39 (f)—*PMA supplements*: 33,346 burden hours

FDA believes that the amendments mandated by FDAMA for § 814.39(f), permitting the submission of the 30-day notices in lieu of regular PMA supplements, will result in an approximate 10 percent reduction in the total number of hours as compared to regular PMA supplements. As a result, FDA estimates that 33,346 hours of burden are needed to complete the requirements for regular PMA supplements.

- § 814.82—*Postapproval requirements*: 6,075 burden hours

Postapproval requirements concern approved PMAs that were not reclassified and require a periodic report. The range of PMAs that fit this category averaged approximately 45 per year (70 percent of the 64 periodic submissions). Most approved PMAs have been subject to some post approval

study requirement. Approximately half of the average submitted PMAs (32) require associated postapproval studies (i.e., followup of patients used in clinical trials to support the PMA or additional preclinical information) that is labor-intensive to compile and complete, and the other PMAs require minimal information. Based on experience and consultation with industry, FDA has estimated that preparation of reports and information required by this section require 6,075 hours (135 hours per respondent).

• § 814.84—*Reports*: 450 burden hours

Postapproval requirements described in § 814.82 require a periodic report. FDA has determined respondents meeting the criteria of § 814.84 will submit reports on a periodic basis. As stated previously, the range of PMAs fitting this category averaged approximately 45 per year. These reports have minimal information requirements. FDA estimates that respondents will construct their report and meet their requirements in approximately 10 hours. This estimate is based on FDA's experience and on consultation with industry. FDA estimates that the periodic reporting required by this section will take 450 hours.

Statutory Burden: The total hours for statutory burden is 1,750. This burden estimate was based on actual real FDA data tracked from January 1, 1998, to the present, and an estimate was derived to forecast future expectations with regard to this statutory data.

Recordkeeping

The recordkeeping burden in this section involves the maintenance of records used to trace patients and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records would be required only of those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMAs are eventually approved and 75 percent of those have original clinical trial data. Therefore, approximately 45 PMAs a year (64 annual submissions times 70 percent) would be subject to these requirements. Also, because the requirements apply to all active PMAs, all holders of active PMA applications must maintain these records. PMAs have been required since 1976, and there are 1,075 active PMAs that could be subject to these requirements, based on actual FDA data. Each study has approximately 200 subjects, and at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 17 hours. The aggregate burden for all 1,075 holders of approved original PMAs, therefore, is 18,275 hours (1,075 approved PMAs with clinical data x 17 hours per PMA).

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions to approval to ensure the device's continuing safety and effectiveness.

Dated: March 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7607 Filed 4–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0268]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Biological Products: Reporting of Biological Product Deviations in Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Biological Products: Reporting of Biological Product Deviations in Manufacturing" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 31, 2003 (68 FR 75572), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0458. The approval expires on March 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7608 Filed 4–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; Office of the Director

Notice of Meeting

The Office of the Director, National Institutes of Health (NIH), announces a meeting of the NIH Blue Ribbon Panel on Conflict of Interest Policies, a working group of the Advisory Committee to the Director, NIH. The meeting is scheduled for April 5–6, 2004, beginning at 8:30 a.m. each day.

The meeting will be held at the NIH, 9000 Rockville Pike, Bethesda, Maryland, Building 31C, Conference Room 6. Attendance will be limited to space available. In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

On April 5, the Panel will be in public session from 10 a.m.–2 p.m.; the Panel will meet in closed, Executive Session, from 8:30–10 a.m. and from 2:15 p.m.–4 p.m. On April 6, the Panel will meet in closed, Executive Session, from 8:30 a.m.–2 p.m. Closed sessions will be used for the Panel to work on their recommendations and the report. The agenda will be posted on the NIH Web site (*http://www.nih.gov*) prior to the meeting. Any person wishing to make a presentation should notify Charlene French, Office of Science Policy, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892, telephone 301–496–2122 by April 2, 2004, or by e-mail: *blueribbonpanel@mail.nih.gov*.

Oral comments will be limited to 5 minutes. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of presentations.

The opportunity to speak will be based on a first come first served basis. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed. Please provide, if possible, an electronic copy of your comments.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment, if time permits and at the discretion of the co-chairs.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Charlene French at the address listed earlier in this notice in advance of the meeting.

Dated: March 30, 2004.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7696 Filed 4–1–04; 11:04 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Wilson/Fish Discretionary Grant Program

Funding Opportunity Title: Wilson/Fish Discretionary Grant Program.

Announcement Type: Standing.

Funding Opportunity Number: HHS–2004–ACF–ORR–RW–0005.

Category of Funding Activity: ISS Income Security and Social Services.

CFDA Number: 93.583.

Due Dates for Applications: This is a standing announcement applicable from the date of publication until canceled or modified by the Director of the Office of Refugee Resettlement. The closing date for new projects is January 31 of each year. The closing date for existing projects that are applying to begin a new project period is April 30 of each year. Under Category One, if a State withdraws from the program, the Director may invite applications outside of the proposed closing date, if necessary, to respond to the needs of the State's refugee population.

I. Funding Opportunity Description

Executive Summary: The Office of Refugee Resettlement (ORR) announces that applications will be accepted from public and private non-profit organizations, including faith-based and community organizations, under a standing announcement for Wilson/Fish projects which propose alternative approaches to serving refugees.[1] The purpose of Wilson/Fish projects is to provide integrated services and cash assistance to refugees in order to increase refugees' prospects for early employment and self-sufficiency, reduce their level of welfare dependence and promote coordination among voluntary resettlement agencies and service providers. Projects will be accepted under either of two categories: (1) Projects to establish or maintain a refugee program in a State where the State is not participating in the refugee program or is withdrawing from the refugee program or a portion of the program; and (2) projects to provide an alternative to the existing system of assistance and services to refugees. Funding is available to these projects under the "Wilson/Fish" authority. This notice replaces the notice published in the **Federal Register** of April 22, 1999 (64 FR 19793).

The Office of Refugee Resettlement (ORR) announces that applications will be accepted from public and private non-profit organizations including faith-based and community organizations, under this standing announcement for Wilson/Fish projects which propose alternative approaches to serving refugees. Projects will be accepted under either of two categories: (1) Projects to establish or maintain a refugee program in a State where the State is not participating in the refugee program or is withdrawing from the refugee program or a portion of the program; and (2) projects to provide an alternative to the existing system of assistance and services to refugees.

Category One of this announcement provides an opportunity for an applicant(s) to continue the provision of refugee program services and assistance, including refugee cash and medical assistance, employment and other social services and targeted assistance in a State when the State elects to discontinue participation in the program or is not currently participating in the program. This category may also be used when a State elects to cease participation in all of the above components except for medical assistance and preventive health and where the Director of ORR believes that continued resettlement of refugees in that State is in the best interests of the government. A consortium of voluntary agencies, a lead voluntary agency, or another public or private non-profit agency may apply to administer and provide services and assistance to refugees in the State or local geographic area.

Category Two provides interested applicants an opportunity to implement alternative projects to promote refugee self-sufficiency. Some examples include: (1) Where assistance and services for refugees receiving refugee cash assistance (RCA) and those receiving Temporary Assistance for Needy Families (TANF) could be provided in a better coordinated, effective, and efficient manner; (2) where TANF-eligible refugees may not have access to timely, culturally and linguistically compatible services or employment and training programs; (3) where the regulatory options for delivery of services and assistance to refugees do not present the most effective resettlement in that location, and where resettlement could be made more effective through the implementation of an alternative project; (4) where refugees, particularly in two-parent families, are in danger of becoming dependent upon welfare and using the full-time period of assistance allowed under the TANF program in a State, thereby removing the ability of the family to access TANF as a safety net in the future; (5) where the continuity of services from the time of arrival until the attainment of self-sufficiency needs to be strengthened; or (6) where it is in the best interest of refugees to receive assistance and services outside the traditional welfare system.

At a minimum, applicants are expected to propose a range of services and financial assistance generally comparable to those currently available to eligible refugees in the State. Applicants in Category One may propose to transfer and serve in the Wilson/Fish project those clients who have not completed their period of eligibility under the existing RCA program. Applicants in Category Two

[1] Eligibility for Wilson-Fish includes refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, certain Amerasians from Vietnam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR. (See Part I of this notice on "Legislative Authority," and refer to 45 CFR 400.43 and the ORR State Letter #01–13 on the Trafficking Victims Protection Act dated May 3, 2001, located at *http://www.acf.dhhs.gov/programs/orr/policy/sl01-13.htm*, as modified by ORR State Letter #02–01 dated January 4, 2002, located at *http://www.acf.dhhs.gov/programs/orr/policy/sl02-01.htm).* The term "refugee," used in this notice for convenience, is intended to encompass these additional persons who are eligible to participate in refugee program services, including the Wilson-Fish program.

must propose an alternative project for refugees in one or more geographic areas and cover, at a minimum, all newly arriving refugees in a geographic area of the cash assistance type proposed, *e.g.*, all refugees otherwise eligible for RCA and/or TANF (referred to as "RCA-type" or "TANF-type" refugees). No projects in either category may propose transferring to the Wilson/Fish project refugees who are already enrolled in the TANF program.

Services and assistance under these awards are intended to help refugees attain self-sufficiency within the period of support defined by 45 CFR 400.211. This period is currently eight months after arrival. We expect that most funded projects funded will provide services and assistance to refugees for this period of time, as needed.

ORR will entertain proposals, subject to the availability of appropriated funds, to provide interim cash support to refugees who would otherwise be eligible for the Temporary Assistance for Needy Families (TANF) program, in addition to those refugees who would otherwise be eligible for the Refugee Cash Assistance (RCA) program.

Consistent with section 412(e)(7)(B) of the Immigration and Nationality Act (INA), refugees in projects funded under this announcement will be precluded from receiving cash assistance under the TANF program or the RCA program during the period of support provided under the Wilson/Fish project. If alternative medical assistance is included, participants will be precluded from receiving RMA or Medicaid during the period of support provided under the Wilson/Fish project.

Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

ORR encourages prospective applicants to consult with ORR during the development of the application.

Program Purpose

The purpose of the announcement is to enable applicants to implement alternative projects under one of two categories in order to provide interim financial assistance, social services and case management to refugees in a manner that encourages self-sufficiency, reduces the likelihood of welfare dependency and fosters greater coordination among resettlement agencies and services providers in a community. ORR is interested in projects which optimize all available resources—from Federal and State governments and the community—to make the resettlement period as beneficial as possible. An integrated system of assistance and services is an essential characteristic of a Wilson/Fish project.

Although ORR has included the provision of medical assistance as an allowable activity under this announcement, the best medical assistance option available in most circumstances is the existing State-administered program of refugee medical assistance or Medicaid. The option to provide medical assistance under this announcement is available under two circumstances: (a) Primarily for Category One projects where a State chooses to discontinue participation in all areas of the refugee program, including the provision of refugee medical assistance; and (b) under Category Two, in the event that there are significant problems in the provision of medical assistance to refugees in a State and where an alternative private medical assistance plan or provider is available which is able to provide a more appropriate and a timely range of services for refugees at an affordable cost.

In the case where an alternative medical assistance system is approved, refugee participants would not be permitted to receive Medicaid or RMA during the period of support provided under the Wilson/Fish project because they would be receiving comparable medical assistance.

Legislative Authority

In October, 1984, Congress amended the Immigration and Nationality Act to provide authority for the Secretary of Health and Human Services to implement alternative projects for refugees. This provision, known as the Wilson/Fish Amendment, 8 U.S.C. 1522(e)(7), provided:

> (7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers * * *.
>
> (B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act * * *.
>
> (D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under section 414(a) of this Act, part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

Funding Availability

ORR will consider requests for funding based on the merits of the proposals. Requests do not have to be limited to the amount being spent for current assistance and services, but such amounts will be one of the measures used in considering the reasonableness of the request.

Interim cash and medical assistance under the Wilson/Fish program will be provided from funds appropriated under the Transitional Assistance and Medical Services (TAMS) line item. Funds for social services under the Wilson/Fish program will be provided separately through the formula refugee social services grant. Social services funding will be based upon each State's allocation listed in the Final Social Services Notice.

Applicants are encouraged to cover all or a portion of the costs of interim financial support in this program for TANF-eligible refugees by either seeking a relevant portion of State and Federal TANF funds from the State TANF agency, or seeking State-only funds which may be counted under certain circumstances toward the State's maintenance of effort (MOE) requirement. Those refugees supported by Federal or State TANF funds would be subject to TANF participation and work requirements, while refugees supported with State-only funds would not be subject to TANF rules. Medical services for TANF-eligible refugees must be charged to the State Medicaid program if otherwise eligible.

Definition of Terms

Interim Financial Support: To provide financial assistance adequate to meet the basic needs of refugees otherwise eligible for RCA and/or for TANF at a level generally comparable to assistance allowable under those programs. The greater part of this assistance is expected to be provided in the form of cash payments to refugees, but may also include incentive bonuses for early employment or payment for work-related expenses such as transportation or tools.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Description of Federal Substantial Involvement with Cooperative Agreement: Under the cooperative agreement, the grantee will be expected to submit for Federal review and approval the:

(1) Design of the service delivery model and amendments to the model.

(2) Policy manual and proposed amendments to manual.

(3) Staffing component and grantee is to promptly notify ORR of any changes regarding top level staff.

(4) Quarterly performance and expenditure reports.

(5) Schedule for monitoring sub-grantees (if applicable) with respect to location, dates and topics.

(6) Reports following site visits.

Anticipated Total Funding Amount: $22,000,000 annually.

Anticipated Number of Awards: 11–13.

Ceiling on Amount of Individual Awards: none.

Floor on Amount of individual awards: none.

Average Anticipated Award Amount: $1,600,000 per budget period.

Length of Project Period: Five years, funded in five 12-month budget periods.

III. Eligibility Information

1. *Eligible Applicants:* State governments;

County governments;

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education;

Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education;

Others.

Additional Information of Eligibility:

In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status", eligibility for refugee program services and assistance also includes: (1) Asylees [2] admitted under section 208 of the Immigration and Nationality Act (2) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (3) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Program Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202); (4) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513); and (5) victims of a severe form of trafficking as required by section 107(b)(1)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) (22 U.S.C. 7105(b)(1)(A). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for an agency or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Because a Wilson/Fish project will have a potential impact on a State's or locality's budgetary needs for cash assistance and/or medical assistance, as well as social services, a non-State applicant must coordinate its activities with the State Refugee Coordinator in the development and implementation of an alternative project under Category Two of this announcement. State applicants should also coordinate their proposed activities with other participants in refugee resettlement such as voluntary resettlement agencies, mutual assistance associations, community and faith-based organizations, if applicable.

2. *Cost Sharing and Matching:* Cost sharing or matching funds are not required for applications submitted under this program announcement.

3. *Other:* On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or before October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Eligible applicants include public and private non-profit organizations, such as States, private voluntary resettlement agencies, a consortium of agencies, local government entities, refugee mutual assistance associations, community and faith-based organizations.

Private, nonprofit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

IV. Application and Submission Information

1. Address To Request Application Package

Carl Rubenstein, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade SW., 8th Floor West, Washington, DC 20447, E-mail: *crubenstein@acf.hhs.gov*, Telephone: (202) 205–5933, URL: *http://www.acf.hhs.gov/programs/orr/funding/akit.htm.*

2. Content and Form of Application Submission

Application Content

Each application must include the following components:

1. Table of Contents.

2. Project Summary/Abstract of the Proposed Project—very brief, not to exceed one page, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

3. Completed Standard Form 424—that has been signed by an Authorized Official of the organization applying for the grant who has the authority to obligate the organization legally.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

[2] The time-eligibility for ORR assistance and services begins from the date asylum is granted (see ORR State Letter 00–12).

5. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.

6. Project Narrative—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

Application Format

Each application should include one signed original and two additional copies. Faxed applications are not acceptable. Applications should be submitted on white 8.5 × 11 inch paper only. Do not use colored, oversized or folded materials. The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides. Attachment and appendices should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent for partnership agreements. Please do not include books or video tapes as they are not easily reproduced and are therefore inaccessible to the reviewers. Each page should be numbered sequentially, including the attachments or appendices.

Required Standard Forms

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form.

Applicants have the option of omitting from the application copies (not to original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a coy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary;
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V. 1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date noted above. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. on the deadline date will not be considered for competition. Applicants

using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed).

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Summary/Abstract	Summary of application request.	.....Do	Do.
SF424,SF424A, SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/orr/funding/akit.htm.*	Do.
Narrative Budget Justification.	As described above	Consistent with guidance in "Application Format" section of this announcement.	Do.
Project Narrative	A Narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	.....Do	Do.
Certification regarding lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/programs/orr/funding/akit.htm.*	Do.
Disclosure of Lobbying Activities (SF–LLL).	.....Do	.....Do	Do.
Environmental Tobacco Smoke Certification.	.....Do	.....Do	Do.

Additional Forms

Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Applicants.	Per form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

A list of the Single Points of Contact for each State and Territory is included with the application materials in this announcement.

5, Funding Restrictions

Pre-award costs cannot be charged to this grant.

6. Other Submission Requirements

Electronic Address to Submit Applications: *www.Grants.Gov.*

Submission by Mail: Mailed applications shall be considered as meeting the announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Sylvia Johnson, Division of Discretionary Grants, ACF, 370 L'Enfant Promenade, SW., Washington, DC 20447. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Sylvia Johnson, Division of Discretionary Grants". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per overall response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections are included in the program announcement: The Uniform Project Description is approved under OMB control number 0970–0139, which expires 3/31/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. All applicants will be required to establish proposed performance goals for each of the six ORR performance outcome measures for the upcoming Federal fiscal year. Proposed performance goals must be included in the application for each performance measure. The six ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and entered employments with available health benefits. Wilson/Fish program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the "Quarterly Performance Report." Identify other benefits refugees will realize as a result of the Wilson/Fish project, including enhanced acculturation and other social adjustment measures. Describe how and what data will be collected and how this data will be used to analyze project results. Describe the plan and schedule for project monitoring.

Approach

Outline a plan of action which describes the scope and detail of how

the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and sub-grantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application or by application deadline.

Evaluation Criteria

Evaluation Criteria I: Approach (Maximum: 30 points)

The proposed project design is clear, logical, complete and reasonable in terms of (a) the proposed strategies related to the target population, the geographic area to be covered, the adequacy of the system, the policies and administration of interim cash support; (b) the likelihood that the relationship between the interim support and services described will result in a program which delivers quality resettlement; and (c) the adequacy of the cash assistance policies and procedures for appeals and fair hearings. The application has included adequate evidence of consultation with other relevant agencies and actors, *e.g.*, the State Coordinator in a non-State application and the voluntary agencies and refugee service providers in a State application. The application will be evaluated on the extent to which it addresses the following:

a. The target population (numbers, ethnicity, and other characteristics such as age, family composition, ability to speak English, and labor skills); and the targeted populations by the anticipated category of public assistance for which the population may otherwise be eligible.

b. The proposed management plan indicating who has fiscal and programmatic responsibility for the overall project and for individual components. Applicant identifies the organizational structure and includes a staffing pattern and key position descriptions. Sources and allocation of funds for administration and staffing should be detailed and clearly shown for each position and activity.

c. The proposed services and how they will be provided, *e.g.*, employment and case management services.

d. The proposed system for providing cash support, including: (i) The income standards for cash assistance eligibility; (ii) payment levels to be used to provide cash assistance to eligible refugees; (iii) assurance that the payment levels established are not lower than the State TANF amount; (iv) a detailed description of how benefit payments will be structured, including the employment incentives and/or income disregards to be used, if any; (v) a description of how refugees residing within the project area will have appropriate access to cash assistance and services; (vi) a description of the eligibility criteria; (vii) a description of provisions for sanctions for non-cooperation as required by section 412(e)(2) of the INA; (viii) a description of the constitutionally required due process procedures to be used to ensure appropriate protections and due process for refugees, such as notice of adverse action and the right to mediation (in the case of a failure to accept employability services), a predetermination hearing, and an appeal to an independent entity; and (ix) a description of the procedures to be used to safeguard the disclosure of information on refugee clients.

e. The proposed system for providing alternative medical assistance, if applicable, including: (a) The type and range of services to be made available (*e.g.*, physician, inpatient, prescription, surgical, emergency, dental, *etc.*); (b) a comparison of the system and range of medical services proposed to the currently available RMA and Medicaid system and services; (c) the type of provider proposed and history of the proposed provider, especially in providing services to low-income and ethnically diverse communities; (d) a description of how refugees, especially those who do not speak English or who have limited English skills, will have equal, easy, and timely access to medical assistance; (e) variables which will affect the cost of this assistance. Include a comparison of current costs with proposed costs. A description of

the constitutionally required due process procedures described in d(viii), above, must also be included for medical assistance alternative projects.

f. Assurances that the written policies of the alternative project will be made available to refugee clients, including agency eligibility standards, duration and amount of cash assistance payments and medical assistance (if applicable), the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. Assurance that agency policy materials will be made available to refugee clients in English and in their own language.

g. How all activities of the project will be coordinated among resettlement agencies and service providers in the community, and how refugees will have access to other programs in the community, such as the Children's Health Insurance Program (CHIP), child care services, and other support programs for working families and individuals.

Evaluation Criteria II: Objectives and Need for Assistance (Maximum: 20 points)

The improvements proposed to be implemented by the project are based on a thorough review and description of the current resettlement system in the geographic area to be covered, in terms of the services and assistance available; the ability of refugees to access culturally and linguistically appropriate services; the employment outcomes achieved (types of jobs currently available and length of time after arrival required to obtain these jobs); and the post-employment services available. The application will be evaluated on the extent to which it clearly describes:

a. The improvements to be made by the alternative strategy, stated in terms of the population to be served, assistance and services to be provided, and outcomes to be achieved.

b. The planning and preparation for the project, including the primary participants involved in planning for this project and those institutions and organizations consulted, such as the State (if the applicant is applying under category two), refugee mutual assistance associations, local community and faith-based agencies, national voluntary organizations, and other agencies that serve refugees.

Evaluation Criteria III: Organizational Profiles (Maximum: 20 points)

The application must demonstrate that the organization as described has the capacity and resources for effective administration and management of the project, project staff are qualified and have the necessary expertise to manage the project and to deliver bilingual and bicultural services and assistance to refugees in the manner described. The application must describe a system for monitoring and reporting that is attainable and adequate considering the organizational capacity and resources described.

Evaluation Criteria IV: Results or Benefits Expected (Maximum: 15 points)

The outcomes proposed are reasonable, and the methodology for collecting outcome and other data are clearly described and adequate. The application establishes proposed performance goals using the six Government Performance and Results Act (GPRA) measures currently in use in the refugee resettlement program. The six ORR performance measures are: The number of employable refugees in the caseload, the number of entered employments, the number of cash assistance reductions due to employment, the number of cash assistance terminations due to employment, the average hourly wage at entered employment, the number of 90-day employment retentions, and the number of entered employments with health benefits available. The application identifies other benefits refugees will realize as a result of the Wilson/Fish project, including enhanced acculturation and other social adjustment measures.

Evaluation Criteria V: Budget and Budget Justification (Maximum: 15 points)

The budget is clear, logical, complete, and reasonable in relation to the expected activities and outcomes. The line-item budget narrative is understandable and adequately justifies the costs proposed. The data provided to justify the budget are consistently and logically presented in terms of the population to be served. ORR is also interested in the following:

1. A client loading chart showing the anticipated arrival of clients over the budget period and the projected interim assistance (and medical assistance, if applicable) needed on a monthly basis throughout the year to assist those refugees. Provide assumptions about the length of time clients are expected to need that assistance.

2. Identification of administrative costs required for the provision of interim cash assistance and for services separately from those costs projected as part of the overall role of coordinating the refugee program in the geographic area.

3. The amount and source of any additional funding, including in-kind contributions, that will help support the project.

4. If medical assistance is proposed, provide a detailed budget and a narrative concerning the underlying assumptions used in developing the budget, such as the system for co-payments and the proposed amounts of co-payments, if applicable, and other variables such as deductibles, premium amounts, prescription costs, etc.

2. Review and Selection Process

Initial ORR Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the applicable closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is an eligible public or private non-profit agency, and/or a faith-based or community organization, and therefore eligible for funding. ORR will return to the applicant those applications which are found not eligible or incomplete.

Competitive Review and Evaluation Criteria

Applications which pass the initial ORR screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Non-Federal Reviewers

ORR may use Federal as well as non-Federal reviewers. Therefore, applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts of individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

3. Anticipated Announcement and Award Dates

ORR anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline date.

VI. Award Administration Information

1. Award Notices

Successful applicants will receive, by postal mail, a cover letter signed by the ORR Director, attaching the official notice of award, the Financial Assistance Award (FAA) notice, which is signed by the grants management officer. As indicated in part V.3. above, ORR anticipates that successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

45 CFR Part 74
45 CFR Part 92
45 CFR Part 400, where applicable.

3. Reporting Requirements

A. Programmatic Reports: Quarterly
B. Financial Reports: Quarterly
C. Special Reporting Requirements:

Grantees are required to file the Financial Status Report (SF–269) and the Program Progress Reports on a quarterly basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. A final Financial Status Report and Program Progress Report shall be due 90 days after the project period end date. Grantees must maintain adequate records to track and report on project outcomes and expenditures by budget line item.

The official receipt point for the original of all reports and correspondence is the ORR Grants Officer. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period: the original addressed to the Grants Officer, Office of Grants Management; a copy addressed to the ORR Project Officer, Office of Refugee Resettlement (see section VII below for contact information).

VII. Agency Contacts

Program Office Contact: Carl Rubenstein, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW. 8th Floor West, Aerospace Building, Washington, DC 20447–0002, E-mail: *crubenstein@acf.hhs.gov*, Telephone: (202) 205–5933.

Grants Management Office Contact: Sylvia Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW. 4th Floor, Aerospace Building, Washington, DC 20447–0002, E-mail: *syjohnson@acf.hhs.gov*, Telephone: (202) 401–4524.

VIII. Other Information

None.

Dated: March 23, 2004.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 04–7541 Filed 4–2–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Funding Opportunity Title: State Mental Health Data Infrastructure Grants for Quality Improvement (Short Title: State Mental Health DIG)

Announcement Type: Initial.
Funding Opportunity Number: SM 04–005.
Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.
Due Date for Applications: June 16, 2004.

Note: letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due August 15, 2004.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of FY 2004 funds for the State Mental Health Data Infrastructure Grants for Quality Improvement program. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov*.

For complete instructions, potential applicants must obtain a copy of SAMHSA's standard Infrastructure Grants Program Announcement (INF–04 PA [MOD]), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA (MOD) describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including the State Mental Health Data Infrastructure Grants for Quality Improvement. Additional instructions and specific requirements to the State Mental Health Data Infrastructure Grants for Quality Improvement program are described below.

I. Funding Opportunity Description

Authority: Sections 1971 of the Public Health Service Act (42 U.S.C.300y) and 520A of the Public Health Service Act, as amended and subject to the availability of funds.

The State Mental Health DIG program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse systems to support programs and services. SAMHSA's State Mental Health DIG program is intended to fund State Mental Health authorities to develop or enhance their data infrastructure to improve management of mental health service delivery. The Data Infrastructure Grants are also a link in CMHS's ongoing efforts to implement the President's New Freedom Commission in building community systems of care.

The overall goal of the State Mental Health DIG program is to improve the State and local mental health data infrastructure, with a special focus on implementing new Community Mental Health Services Block Grant (MHBG) measures. The program also is a key element of a broader plan to increase State flexibility and improve accountability, generally referred to as Performance Partnership Block Grants (PPGs). Specific program goals include: adoption of common data and information technology standards at the local level and improvement in program management/decision support, planning, and service quality improvement through better information at both State and local levels. Allowable activities for these grants are limited to activities that will support State and local data infrastructure development. Funds may not be used to pay for computer hardware. Software expenditures will be considered on a case-by-case basis.

Background: Since its inception, CMHS has engaged in the development of statistical data standards and related data infrastructure to assist State mental health agencies, local public providers, and private sector entities in better management and program planning, as well as service quality improvement. Without adequate data systems to record information in a comparable way, there can be no reporting of useful information. Hence, evidence-based management, planning with quantitative information, and good measures of program effectiveness, are only possible if comparable data standards are used to record data. There is great need for sound State and local data infrastructure

so that State mental health agencies can report performance measures that lead to service quality improvement, better system management, and quantitative planning. As an initial grant effort, the CMHS Mental Health Data Infrastructure Grant, tested basic and developmental performance measures to be implemented in the MHBG. Forty-nine States, the District of Columbia, and 7 Territories participated in this 3-year grant program. Selected performance measures from this grant initiative will be incorporated into the PPGs in the future.

Presently, however, much remains to be done. Although the previous CMHS grant program tested the proposed MHBG measures, it did not build the local data infrastructure necessary to achieve comparable, Statewide reporting based on common data standards. Similarly, it did not implement key data standards and information technology necessary for quantitative planning and service quality improvement; being developed through the SAMHSA Decision Support 2000+ Initiative. Finally, it did not address the implementation of Health Insurance Portability and Accountability Act (HIPAA) measures required for key health insurance and payment transactions. The State Mental Health DIG will address these specific needs.

II. Award Information

Estimated Funding Available/Number of Awards: It is expected that up to $8.25 million will be available in FY 2004. SAMHSA expects to fund 51 awards, of up to $150,000 per year in total costs (direct and indirect) per year for 3 years for mental health authorities in the 50 States and the District of Columbia, and 8 awards, of up to $75,000 per year in total costs (direct and indirect), per year for 3 years for mental health authorities in the U.S. Territories. Only Category 1-Small Infrastructure Grant awards, as defined in the INF–04 PA (MOD), will be made. Proposed budgets cannot exceed the allowable amount in any year of the proposed project. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. Annual continuations will depend on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

2. *Funding Instrument:* Grant.

III. Eligibility Information

1. *Eligible Applicants* are limited to State Mental Health authorities in the 50 States, the District of Columbia, and the U.S. Territories. A central goal of the State Mental Health DIG grants is to address State mental health planning efforts, particularly in addressing data collection for the Community Mental Health Services Block Grants (CMHSBG) as they transition to PPGs. Only the State Mental Health authorities are eligible for the CMHSBG. Additional information regarding program requirements and applications formatting requirements is provided in the INF–04 PA (MOD) in Section III–3. These eligibility criteria supersede the criteria specified in Section III–1 of the INF–04 PA (MOD).

2. *Cost Sharing or Matching* is required. The statutory authorization for this program, Section 1971 (c)(1) of the Public Health Service Act (42 U.S.C.300y(c) (1)), states that, "(1) With respect to the costs of the program to be carried out under subsection (a) of this section by a State, the Secretary may make an award under such subsection only if the applicant agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs. (2) Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions."

3. *Other:* Applicants must also meet certain application formatting and submission requirements or the application will be screened out and will not be reviewed. These requirements are described in Section IV–2 below as well as in the INF–04 PA (MOD).

IV. Application and Submission Information

1. *Address to Request Application Package:* Complete application kits may be obtained from the National Mental Health Information Center at 1–800–789–2647. When requesting an application kit for this program, the applicant must specify the funding opportunity (State Mental Health DIG) and the funding opportunity number (SM 04–005). All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home page: *http://www.samhsa.gov* (Click on 'Grant Opportunities') and the INF–04 PA (MOD) is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type "SM 04–005/State Mental Health DIG" in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

2. *Content and Form of Application Submission:* Information including required documents, required application components, and application formatting requirements is available in the INF–04 PA (MOD) in Section IV–2.

Checklist for Application Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review.

- ☐ Use the PHS 5161–1 application.
- ☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.
- ☐ Information provided must be sufficient for review.
- ☐ Text must be legible.
  - Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
  - Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.
☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.
- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.
- Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

☐ The 10 application components required for SAMHSA applications should be included. These are:
- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)
- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)

☐ Applications should comply with the following requirements:
- Provisions relating to confidentiality, participant protection and the protection of human subjects, as indicated in the specific funding announcement.
- Budgetary limitations as indicated in Sections I, II, and IV–5 of the specific funding announcement.
- Documentation of nonprofit status as required in the PHS 5161–1.

☐ Pages should be typed single-spaced with one column per page.
☐ Pages should not have printing on both sides.
☐ Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
☐ Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper, or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

3. *Submission Dates and Times:* Applications must be received by June 16, 2004. You will be notified by postal mail that your application has been received. Additional submission information is available in the INF–04 PA (MOD) in section IV–3.

4. *Intergovernmental Review:* Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O. 12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the INF–04 PA (MOD) in Section IV–4. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. *Funding Restrictions:* Information concerning funding restrictions is available in the INF–04 PA (MOD) in Section IV–5.

V. Application Review Information

1. *Evaluation Criteria:* Applications will be reviewed against the Evaluation Criteria and requirements for the Project Narrative specified in the INF–04 PA (MOD), but the allocation of points to each section of the Project Narrative should be disregarded. Each section of the Project Narrative should be given equal weight. SAMHSA intends to fund all States and Territories; however, applications must have sufficient merit. A comprehensive review of each application will be conducted to determine the acceptability of individual projects as well as technical assistance needs. Applicants only need to plan and budget for up to two people to attend one day and a half grantee meeting per year. The following information describes exceptions or limitations to the INF–04 PA (MOD) and provides special requirements that pertain only to State Mental Health DIG grants. Applicants must discuss the following requirements in their applications, in addition to the requirements specified in the INF–04 PA (MOD):

1.1 In "Section A: Statement of Need"

a. Applicants must include an assessment of the States' ability to provide data to complete the required Uniform Reporting System (URS) data tables for the CMHS/MHBG (data pertaining to the basic and developmental performance measures). A listing of all required data tables is provided in Appendix A to this NOFA.

b. Applicants must include an assessment of the State's readiness to implement web-based information technology for the purpose of collecting, analyzing and reporting required performance measures.

c. Applicants must provide a full description of the current SMHA information system, as well as challenges that remain in data collection and reporting. In Appendix 5, please indicate how the State Mental Health Strategic Plan will incorporate grant data goals.

1.2 In "Section B: Proposed Approach"

a. Applicants must clearly identify the activities to be funded through the proposed project and demonstrate that they will lead to improved State and local mental health data infrastructure. Implementation Pilots noted (p.5) in the INF–04 PA (MOD) are not a part of this grant application.

b. Applicants must include a detailed work plan for State data recording and reporting in the project.

c. Applicants must include plans to develop and adopt data standards that

promote improved management, service quality improvement, and compliance with HIPAA requirements.

d. Applicants must include plans to introduce web-based information technology to improve State mental health agency management, planning, and performance measurement. Both the data standards and the information technology of Decision Support 2000+ (DS2000+) shall be considered in developing State and local data systems.

e. Applicants must describe plans for data collection, management, analysis, interpretation and reporting. Data collection instruments/interview protocols should be included in "Appendix 2."

1.3 In "Section C: Staff, Management, and Relevant Experience:"

Applicants must identify required project staff, including one Principal Investigator who is a State data representative and a co-Principal Investigator who is a State planner representative.

1.4 In "Section D: Evaluation and Data:"

Applicants must indicate how the project will be evaluated, including evaluation by stakeholder groups in "Section D: Evaluation and Data" of their applications.

In addition, all SAMHSA grantees are required to collect and report certain data, so that SAMHSA can meet its obligation under the Government Performance and Results Act (GPRA). Grantees of the State Mental Health Data Infrastructure Grants for Quality Improvement program will be required to report URS data (see Appendix A to this NOFA). SAMHSA will assess grantee performance by measuring State progress in reporting the URS data.

2. *Review and Selection Process:* Information about the review and selection process is available in the INF–04 PA (MOD) in Section V–2.

VI. Award Administration Information

Award administration information, including award notices, administrative and national policy requirements, and reporting requirements are available in the INF–04 PA (MOD) in Section VI. SAMHSA's standard terms and conditions are available at *http://www.samhsa.gov/grants/2004/useful_info.asp.*

VII. Agency Contact for Additional Information

For questions concerning program issues, contact: Olinda González, Ph.D., Center for Mental Health Services, 5600 Fishers Lane, Room 15C–04, Rockville, MD 20857; 301–443–2849; e-mail: *ogonzale@samhsa.gov.* For questions on grants management issues, contact: Gwendolyn Simpson, SAMHSA/Division of Grants Management, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857; 301–443–4456; e-mail: *gsimpson@samhsa.gov.*

Appendix A: CMHS Uniform Reporting System (URS) Measures for the Mental Health Block Grant Program

Basic Measures (existing)

Table 1. Profile of the State Population by Diagnosis
Source: Center for Mental Health Services

Table 2. Profile of Clients Served, All Programs, by Age, Gender and Race/Ethnicity
Source: Administrative Data Systems (Core Measure)

Table 3A. Profile of Clients Served in Community Mental Health Settings by Homeless Status
Source: Administrative Data Systems

Table 3B. Profile of Clients Served in State Psychiatric Hospitals and Other Inpatient Settings
Source: State Hospital or Other Inpatient Administrative Data Systems

Table 4. Profile of Adult Clients by Employment Status
Source: Administrative Data Systems (Core Measure)

Table 5. Profile of Clients by Type of Funding Support (Medicaid/Non-Medicaid)
Source: Administrative Data Systems

Table 6. Profile of Client Turnover
Source: Administrative Data Systems

Table 7. Profile of State Mental Health Agency Service Expenditures and Sources of Funding
Source: National Association of Mental Health Program Directors' Research Institute

Table 8. Profile of Community Mental Health Block Grant Expenditures for Non-Direct Service Activities
Source: State Mental Health Agency Fiscal Systems

Table 9. Public Mental Health Service System Inventory Checklist
Source: State Mental Health Agency

Table 10. Profile of Agencies Receiving Block Grant Funds Directly from the State Mental Health Authority
Source: State Mental Health Agency

Table 11. Summary Profile of Client Evaluation of Care
Source: State Mental Health agency Statewide Surveys

State PPG Core and OMB PART Measure

Table 12. State Mental Health agency Profile
Source: Administrative Data Systems

Developmental Measures (measures under development)

Table 13. Profile of Unmet and Inappropriately Treated Needs of the State Population
Source: Center for Mental Health Services

Table 14. Profile of Clients Served with Serious Mental Illness (SMI) and Serious Emotional Disturbance (SED), All Programs by Age, Gender, and Race/Ethnicity
Source: Administrative Data Systems

Table 15. Profile of Clients' Living Situation in Institutional and Non-Institutional Settings
Source: Administrative Data Systems (Core Measure)

Table 16. Profile of Clients with Serious Mental Illness (SMI) and Clients with Serious Emotional Disturbance (SED) receiving Evidence-based Services (Supported Housing, Supported Employment, Assertive Community Treatment-Adults, and Therapeutic Foster Care-Children)
Source: Administrative Data Systems (Core Measure)

Table 17. Profile of Adult Clients with Serious Mental Illness (SMI) receiving Evidence-Based Services of Family Psychoeducation, Integrated Treatment for Co-occurring Disorders, and Illness Management and Recovery Skills
Source: Administrative Data Systems (Core Measure)

Table 18. Profile of Adults with Schizophrenia receiving New Generation of Medications
Source: Administrative Data Systems

Table 19. Summary Profile of Client Outcomes for Children with Increased Level of School Attendance, Children who have had Contact with the Juvenile Justice System, and Adults who have had Contact with the Criminal Justice System
Source: Administrative Data Systems (Core Measure)

Table 20. Rate of Readmission to State Psychiatric Hospitals within 30 days and 180 days.
Source: State Hospital Administrative Data Systems (Core Measure)

Dated: March 29, 2004.

Margaret Gilliam,

Acting Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7611 Filed 4–2–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for a New Public Collection of Information; Transportation Worker Identification Credential (TWIC) National Survey

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the new information collection requirement abstracted below that will

be submitted to OMB in compliance with the Paperwork Reduction Act.

DATES: Send your comments by June 4, 2004.

ADDRESSES: Comments may be mailed or delivered to Lolie Kull, TWIC Program Office, TSA Headquarters, East Tower, Floor 8, TSA–19, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA Headquarters, West Tower, Floor 4, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of the specified information collection, TSA solicits comments in order to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology where appropriate.

Purpose of Data Collection

TSA is in the process of testing the TWIC Program concept, which, if approved, will provide for a single, uniform credential nationwide for transportation workers who require access to secure transportation areas. In the Technology Evaluation phase of the TWIC Program, TSA evaluated five card technologies in many types of physical and logical access transactions, and in the Prototype phase, it intends to evaluate a broad range of business processes as they relate to credentialing, identity, and identity management.

The information collected for the TWIC National Survey differs from these pilot programs in that it will be used as a means to develop a predictive model of the current access control technology infrastructure at transportation sites across the nation, should the TWIC be approved for implementation. The bulk of the information to be collected in the National Survey pertains to the facility (*i.e.*, number of access points, badged population, etc.), not to individuals. This information will be used to help determine implementation approaches for the TWIC Program at transportation facilities and modes across the country that differ by type and size (*e.g.*, aviation, rail, maritime, and pipeline).

Description of Data Collection

TSA will administer a data collection tool (*e.g.*, interviews and/or a web-based survey) to be used at selected transportation facilities. Participation by stakeholders will be voluntary. Selection will be based on interest/willingness to participate, site size, and mode, so as to survey a representative sample of sites nationwide. The survey will have a list of questions designed to collect the following information: (a) Facility name, (b) facility access control technology and infrastructure information (*e.g.*, number of access points, number of worker credentials issued annually, defined secure areas, etc.), (c) facility contact information (*e.g.*, phone number and e-mail address), and (d) company, organization, or affiliation. The respondents who choose to participate in the surveys will be asked to return the completed survey within two weeks of receipt. TSA estimates a total of up to 300 respondents and, based on an estimated two-hour burden per respondent, a maximum program-wide burden of approximately 600 hours.

TSA intends to collect data via the following instruments:

(1) *Site Surveys.* TSA intends to conduct site surveys at transportation sites nationwide. The surveys will be administered using an interview methodology, in which the TSA representative will ask site Security Directors, or their designee, questions pertaining to the site's access control technology infrastructure. While at the site, the TSA representative will also tour the facility to gain a thorough understanding of the site's layout.

(2) *Web-based Survey.* After a thorough understanding of site infrastructures is gained through site surveys, the National Survey will be available as a web-based survey to selected sites. These surveys will be filled out by site Security Directors, or their designee, and be retrieved by a TSA representative. The results of these surveys will serve to further contribute to the data that will be analyzed to develop the predictive model.

Use of Results

The targeted outcome of this data collection will be used to create a predictive model that will aid the TWIC Program in determining the level of effort and capital investment needed to implement the TWIC Program at sites based on their respective site-specific information.

Issued in Arlington, Virginia, on March 26, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–7619 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for Three New Public Collections of Information; Transportation Worker Identification Credential (TWIC) Prototype; Transportation Worker Survey; Lead Stakeholder Port Security Interviews

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on three new information collection requirements abstracted below that will be submitted to OMB in compliance with the Paperwork Reduction Act.

DATES: Send your comments by June 4, 2004.

ADDRESSES: Comments may be mailed or delivered to Lolie Kull, TWIC Program Office, TSA Headquarters, East Tower, Floor 8, TSA–19, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA Headquarters, West Tower, Floor 4, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of the specified information collection, TSA solicits comments in order to—

(1) Evaluate whether the proposed information requirement is necessary for

the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology where appropriate.

Purpose of Data Collection

The Transportation Worker Identification Credential (TWIC) program is working to create a universal credential to be used as a means to enhance access control for individuals requiring unescorted access to secure areas of the national transportation system. The information collected under this proposal will be used to operate and evaluate the TWIC system during the Prototype Phase. In October 2003, TSA obtained a control number (1652–0014) from OMB for the TWIC Technology Evaluation Phase that expires in June 2004. Rather than renew the existing control number, TSA is seeking a new control number due to an expansion in the program's scope for the Prototype Phase, which now includes enhanced criteria to assess business processes of a significantly larger group of transportation workers and facilities. During this phase, TSA will fully develop the program, measure credential performance and effectiveness, collect user feedback, and provide data analysis prior to proceeding to full-scale deployment.

Description of Data Collection

TSA will issue credentials to a select group of transportation workers and then administer two instruments to collect data on the effectiveness of the TWIC program as well as the satisfaction of the transportation workers who will be using these credentials. TSA intends to collect data via the following instruments:

(1) *Transportation Worker Identification Credential (TWIC).* The following information will be collected from individual transportation workers and facility operators to create the credential: (a) Individual's name, (b) other identifying data to include address, phone number, social security number, date of birth, and place of birth, (c) company, organization, or affiliation, (d) biometric data and digital photograph, and (e) access level information. TSA estimates a total of 200,000 respondents and, based on an estimated burden of 22 minutes per respondent, a maximum total program-wide burden of approximately 73,333 hours.

(2) *Transportation Worker Survey.* TSA next intends to conduct a transportation worker survey at each site that is part of the Prototype Phase. These surveys will be distributed randomly either during or after the TWIC is issued at participating transportation facilities. The respondents who choose to participate in the surveys will be asked to return the completed survey within 30 days. The sample of workers receiving surveys at each site will be representative of the demographics of all the workers who are participating in the pilot program, including workers who access facilities on a 24-hour per day, 7-day per week basis.

Participation by workers in the survey will be voluntary. A TSA contractor will administer the survey independent of TSA. The survey will include questions about the workers' experience as well as the effectiveness of the TWIC. Dates, times, and locations will be selected within each site to provide a representation of worker satisfaction and credential effectiveness over the survey period. TSA estimates a total of 1,000 respondents and, based on an estimate of a 15-minute burden per respondent, a maximum program-wide total burden of approximately 250 hours. There will not be a burden on workers who choose not to respond.

(3) *Lead Stakeholder Port Security Interviews.* Finally, TSA will have a contractor conduct personal interviews of the lead stakeholder at each site participating in the Prototype Phase. The purpose of the interview will be to record observations on operational impact, system performance and utility, and identify problems that may have arisen. The results of these interviews will not be used for any formal performance measurement nor published outside of TSA, but will enable service improvement at each site. Participation by stakeholders will be voluntary. The interview format will come from a list of questions and will be limited to 15 minutes per respondent. Based on a projected total of 50 respondents, TSA estimates an aggregate program-wide burden of 12.5 hours. There will be no burden on stakeholders who choose not to respond.

Use of Results

TSA Headquarters will use the results to evaluate the performance and effectiveness of the TWIC program. The results will also be analyzed to support future implementation and program decisions. TSA will further use this data to evaluate the impact of policy or process changes on customer satisfaction, public confidence, and overall security.

Issued in Arlington, Virginia, on March 26, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–7620 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before May 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number: TE083429.

Applicant: Southwest Michigan Land Conservancy, Portage, Michigan.

The applicant requests a permit to take the Michell's satyr butterfly (*Neonympha mitchellii mitchellii*) in Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE083469.

Applicant: National Mississippi River Museum, Dubuque, Iowa.

The applicant requests a permit to take (hold and propagate) the Higgins' eye pearlymussel (*Lampsilis higginsi*) in Iowa. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE083562.

Applicant: Minnesota Pollution Control Agency, St. Paul, Minnesota.

The applicant requests a permit to take (collect) the Topeka shiner (*Notropis topeka*) throughout

Minnesota. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE085016.

Applicant: Merrill B. Tawse, Lucas, Ohio.

The applicant requests a permit to take (trap) the Indiana bat (*Myotis sodalis*) throughout Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia. The scientific research is aimed at enhancement of survival of the species in the wild.

Dated: March 23, 2004.

James T. Leach,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 04–7617 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–04–1430–ES; AZA–31787]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, located in Maricopa County, Arizona, and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869,*et seq.*). The lands are not needed for federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

The following described lands, located in the City of Peoria, Maricopa County, Arizona, and containing approximately 160 acres, have been found suitable for lease or conveyance to the City of Peoria for open space and park and the Northern Municipal Operations Center (MOC) Development and Improvement Plan:

Gila and Salt River Meridian, Arizona

T. 5 N., R. 1 E.,
Section 29, E½E½.

The lease or conveyance would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

FOR FURTHER INFORMATION CONTACT: Camille Champion at the Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, (623) 580–5526.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding the proposed lease, conveyance, or classification of the lands to the Field Manager, Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027.

Classification Comments

Interested parties may submit comments involving the suitability of the land for the proposed Northern Municipal Operations Center Development and Improvement Plan for the City of Peoria. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the uses will maximize the future use or uses of the land, whether the uses are consistent with local planning and zoning, or if the uses are consistent with state and federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for proposed uses. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register.**

Dated: March 2, 2004.

Teresa A. Raml,

Field Manager.

[FR Doc. 04–7572 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Folsom Dam Road, Folsom, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) is planning to prepare an EIS for a proposed permanent restriction to public access to Folsom Dam. The Folsom Dam Road, which was closed indefinitely for security reasons on February 28, 2003, was closed to preserve and protect the core mission of the facility and for the ultimate safety of the public. The closure followed a series of security reviews, including a final review conducted by the Defense Threat Reduction Agency (DTRA) and subsequent full-scale analysis and evaluation of DTRA's recommendations by Reclamation and the Department of the Interior. The evaluation determined that uncontrolled access to Folsom Dam presents a clear security risk to the facility.

DATES: Reclamation will seek public input on alternatives, concerns, and issues to be addressed in the EIS through scoping meetings through scoping meetings in May. The schedule and locations of the scoping meetings are as follows:

- Wednesday, May 26, 2004, 4:30–7 p.m, Sacramento, CA
- Thursday, May 27, 2004, 4:30–7 p.m., Folsom, CA

Written comments on the scope of alternatives and impacts to be considered should be sent to Mr. Robert Schroeder at the below address by June 10, 2004.

ADDRESSES: The meeting locations are:

- Sacramento at the Library Galleria—West Meeting Room, 828 I Street
- Folsom at the Folsom Community Center—West Room, 52 Natoma Street

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder, Reclamation, 7794 Folsom Dam Road, Folsom, California 95630; telephone number (916) 989–7274.

SUPPLEMENTARY INFORMATION: Controlled access by authorized Government personnel is necessary to minimize the security risks and maximize the safety not only of Folsom Dam, but that of the entire Sacramento metropolitan population downstream of the Dam. Reclamation determined that an EIS is needed to examine the effect of the road closure on the natural and human environment.

Alternatives to the proposed action of a permanent restriction to public access include ending the indefinite road closure at some as yet to be determined time, reopening the road on a partial basis, and a no action alternative which would reopen the road to the level of access in place prior to the February 2003 indefinite closure. That level of access included restrictions such as closing the road overnight and allowing no trucks at any time.

If special assistance is required at the scoping meetings, contact Mr. Robert Schroeder, Reclamation, at (916) 989–7274. Please notify Mr. Schroeder as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (916) 989–7285.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 10, 2004.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 04–7556 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–487]

Certain Agricultural Vehicles and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's ("ALJ's") final initial determination ("ID") finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 13, 2003, based on a complaint filed by Deere & Company ("Deere") of Moline, Illinois. 68 FR 7388 (February 13, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; 1,503,576; and 91,860.

On August 27, 2003, the Commission issued notice that it had determined not to review Order No. 14, granting complainant's motion to amend the complaint and notice of investigation to add U.S. Trademark Registration No. 2,729,766.

On November 14, 2003, the Commission issued notice that it had determined not to review Order No. 29, granting complainant's motion for summary determination that complainant had met the technical prong of the domestic industry requirement.

Twenty-four respondents were named in the Commission's notice of investigation. Several of these have been terminated from the investigation on the basis of consent orders. Several other respondents have been found to be in default.

On January 13, 2004, the ALJ issued his final initial determination ("ID") finding a violation of section 337. He also recommended the issuance of remedial orders. Two groups of respondents have petitioned for review of the ID. Complainant and the Commission investigative attorney filed oppositions to those petitions.

On February 18, 2004, the Commission issued notice that it had decided to extend the time to determine whether to review the ID to March 29, 2004, and to extend the target date for completing the investigation to May 13, 2004.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the oppositions thereto, the Commission has determined not to review the final ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the January 13, 2004, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on April 12, 2004. Reply submissions must be filed no later than the close of business on April 19, 2004. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* § 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.43–210.44 of the Commission's Rules of Practice and Procedure (19 CFR 210.43–210.44).

Issued: March 30, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7571 Filed 4–2–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to Three Respondents on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondents GP Batteries, International, Ltd., GPI, International, Ltd., and Gold Peak Industries (North America), Inc. to terminate the above-captioned investigation with respect to those three respondents on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan.

On February 4, 2004, complainants and respondents GP Batteries, International, Ltd., GPI, International, Ltd., and Gold Peak Industries (North America), Inc. (collectively the "Gold Peak Respondents") filed a joint motion to terminate the investigation as to the Gold Peak Respondents on the basis of settlement agreement. On February 17, 2004, the Commission investigative attorney filed a response supporting the motion. On February 17, 2004, a group of nine Chinese battery companies that are also respondents ("Chinese Respondents") in the investigation filed a response in opposition to the motion to terminate. They opposed termination of the Gold Peak Respondents because they contended that the settlement agreement did not contain all the terms of the settlement, and therefore the settlement agreement did not comply with Commission rule 210.21(b)(1). They also contended that the settlement agreement is anticompetitive and interferes with the administration of justice because there were some unresolved ethical issues concerning the Gold Peak Respondents' attorney.

On March 3, 2004, the ALJ issued the subject ID (Order No. 125) terminating the investigation as to the Gold Peak Respondents on the basis of a settlement agreement. He indicated that the settlement agreement complies with Commission rule 210.21(b)(1). He found that, although the settlement agreement indicates that the parties will try to negotiate a license agreement, there are no other agreements between the Gold Peak Respondents and complainants at this time. The ALJ further noted the Chinese Respondents' arguments concerning anticompetitive effects and some unresolved ethical issues concerning the Gold Peak Respondent's attorney, but he indicated that he did not find that either constituted the extraordinary circumstances that would warrant denying the motion to terminate.

No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: March 30, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7570 Filed 4–2–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–007]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: April 7, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1039–1040 (Final)(Certain Wax and Wax/Resin Thermal Transfer Ribbons from France and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 19, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
Issued: March 31, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–7759 Filed 4–1–04; 12:05 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on March 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Disk Stream, Inc., Kitchener, Ontario, Canada; Perspective Media Group, San Francisco, CA; Profound Effects, Middleton, WI; and S/4/M Solutions for Media, Cologne, Germany have been added as parties to this venture. Also, Maximum Throughput, Montreal, Quebec, Canada has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on December 19, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 21, 2004 (69 FR 2945).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–7655 Filed 4–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on March 10, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Honeywell Technology Solutions Lab, Bangalore, India has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on December 12, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 21, 2004 (69 FR 2945).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–7654 Filed 4–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on March 12, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Corelis, Cerritos, CA; and

Advanced Integration, LLC, Columbus, OH have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on December 12, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 21, 2004 (69 FR 2946).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–7656 Filed 4–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,294]

A & M Tool, M Division, Inc., Arden, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2004, in response to a petition filed by a company official on behalf of workers of A & M Tool, M Division, Inc., Arden, North Carolina.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level. Consequently, the petition has been terminated.

Signed at Washington, DC this 24th day of March 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7579 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,400]

Allen Edmonds Shoe Corporation, Lake Church Division, Beigton, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2004 in response to a petition filed on behalf of workers at Allen Edmonds Shoe Corporation, Lake Church Division, Beigton, Wisconsin.

The petition has been deemed invalid. One of the three petitioning workers was separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of March 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7585 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,201]

Avent, Inc., Division of Kimberly-Clark Corporation, Haltom City, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2004, in response to a worker petition filed by a company official on behalf of workers at Avent, Inc., Division of Kimberly-Clark Corporation, Haltom City, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 19th day of March 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7581 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,374]

B & B Marketing, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 27, 2004 in response to a petition filed by a company official on behalf of workers at B & B Marketing, Fort Payne, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 5th day of March 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7586 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,150]

B.J. Cutting, a Subsidiary of Lawrence Stevens Fashions, LTD, Hazleton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2004 in response to a petition filed by a company official on behalf of workers at B.J. Cutting, a subsidiary of Lawrence Stevens Fashions, Ltd, Hazleton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of March 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7583 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,425]

Bloomsburg Mills, Inc., Bloomsburg, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an

investigation was initiated on March 5, 2004, in response to a petition filed by a company official on behalf of workers at Bloomsburg Mills, Inc., Bloomsburg, Pennsylvania.

This petition is a duplicate of the petition filed for workers of the subject firm under TA–W–54,443, for which a certification was issued on March 16, 2004. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7577 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,251]

Chatham & Borgstena, Inc., Mt. Airy, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2004 in response to a petition filed by a company official on behalf of workers at Chatham & Borgstena, Inc., Mt. Airy, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of March 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7580 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,483]

Colortex Corporation, Inc., York, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Colortex Corporation, Inc., York, South Carolina (TA–W–54,483).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7574 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,597]

Fashion Technologies, Gaffney, SC; Notice of Affirmative Determination, Regarding Application for Reconsideration

By application postmarked January 31, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on December 30, 2003, and published in the **Federal Register** on February 6, 2004 (69 FR 5866).

The Department reviewed the request and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7592 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,291]

Gateway Manufacturing, Inc., Hillsdale, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 2004 in response to a petition filed by a company official on behalf of workers at Gateway Manufacturing, Inc., Hillsdale, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 11th day of March 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7588 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,353]

Gateway Sportswear Corp., A Subsidiary of the Production Department, Confluence, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2004 in response to a petition filed by a company official on behalf of workers at Gateway Sportswear, Confluence, Pennsylvania.

The petitioning group of workers is covered by an earlier petition instituted on February 19, 2004 (TA–W–54,314) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of March 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7587 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,168]

Handgards, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2004 in response to a petition filed by a company official on behalf of workers at Handgards, Inc. El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of March 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7589 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,442]

Holman Cooking Equipment, Inc., a Subsidiary of Star International Holdings, Saco, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 8, 2004 in response to a petition filed by a company official on behalf of workers at Holman Cooking Equipment, Inc., a subsidiary of Star International Holdings, Saco, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7575 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,162]

International Computer Consulting Group, Inc., San Diego, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2004 in response to a petition filed by a company official on behalf of workers of International Computer Consulting Group, Inc., San Diego, California.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the petition has been terminated.

Signed at Washington, DC this 10th day of March 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7590 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,690]

Learjet, Inc., Tucson Completion Center Including Leased Workers of Adecco Technical, ATSI, CDI, Design Support Services, JIT, PDS, Smart, Strom and TAD Technical, Tucson, Arizona; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8, 2004, applicable to workers of Learjet, Inc., Tucson Completion Center, Tucson, Arizona. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Adecco Technical, ATSI, CDI, Design Support Services, JIT, PDS, Smart, Strom and TAD Technical were employed at Learjet, Inc., Tucson Completion Center at the Tucson, Arizona location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Technical, ATSI, CDI, Design Support Services, JIT, PDS, Smart, Strom and TAD Technical working at Learjet, Inc., Tucson Completion Center, Tucson, Arizona.

The intent of the Department's certification is to include all workers of Learjet, Inc., Tucson Completion Center who were adversely affected by the shift in production to Canada.

The amended notice applicable to TA–W–53,690 is hereby issued as follows:

All workers of Learjet, Inc., Tucson Completion Center, and leased workers of Adecco Technical, ATSI, CDI, Design Support Services, JIT, PDS, Smart, Strom and TAD Technical, Tucson, Arizona, who became totally or partially separated from employment on or after November 26, 2002, through January 8, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of March 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7591 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,440]

Medsource Technologies, Newton, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 8, 2004 in response to a petition filed by a company official on behalf of workers at Medsource Technologies, Newton, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7576 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,441]

Oxford Industries, Inc., Lyons, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Oxford Industries, Inc., Lyons, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 10th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7584 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,160]

Stanley Brothers, LLC, Lincoln, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2004, in response to a petition filed by a state agency representative on behalf of workers at Stanley Brothers, LLC, Lincoln, Maine.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the petition has been terminated.

Signed at Washington, DC, this 16th day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7582 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,366]

Summitville Tiles, Inc., Summitville, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2004, in response to a petition filed by a company official on behalf of workers at Summitville Tiles, Inc., Summitville, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7578 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,752]

TRW Automotive, Jackson, MI; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 15, 2003, applicable to workers of TRW Automotive, Jackson, Michigan. The notice was published soon in the **Federal Register** on November 6, 2003 (68 FR 62834).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of brakes.

New information from the State shows that a company official of the subject firm requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company states that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse. Review of this information shows that all eligibility criteria under section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met.

Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–52,752 is hereby issued as follows:

"All workers of TRW Automotive, Jackson, Michigan, who became totally or partially separated from employment on or after August 25, 2002 through October 15, 2005, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 17th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–7593 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 1, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment And Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Benefit Accuracy Measurement Program.

OMB Number: 1205–0245.

Agency Number: ETA Handbook No. 395.

Frequency: Weekly.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government; State, Local or Tribal government.

PCA/DCA DATA COLLECTION BURDEN PER STATE

	Paid claims	Monetary denied claims	Separation denied claims	Non-separation denied claims	Total
Cases	457	150	150	150	907
Respondents/Case	4.90	3.20	3.00	3.10	
Hours/Case	10.22	7.925	7.525	7.675	
Total Respondents	2239.3	480	450	465	3634.30
Total Hours	4670.54	1188.75	1128.75	1151.25	8139.29

The total response burden for both paid and denied claims and the 52 SWAs is:

52 SWAs × 3,634.3 respondents = 188,983.6 respondents

52 SWAs × 8,139.29 hours = 423,243.08 hours

Total Hours: 423,243.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $12,545,000.

Description: The Department of Labor requests approval to extend the Benefit Accuracy Measurement (BAM) program. The BAM program provides reliable estimates of the accuracy of benefit payments and denied claims in the UI program, and identifies the sources of mispayments and improper denials so that their causes can be eliminated.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E4–752 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites 1 public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 20, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

Fax: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their

administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Risk Management Agency (N1–258–03–2, 5 items, 3 temporary items). Background case files for directives and bulletins. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of directives and manager's bulletins.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–3, 22 items, 21 temporary items). Records of the National Centers for Environmental Prediction. Included are climatological assessments, global precipitation estimates, and electronic copies of records created using electronic mail and word processing. Also included are data, system documentation, inputs, outputs, and backups associated with such systems as the Climate Data Assimilation System, the Climate Assessment Database, and the Automated Tropical Cyclone Forecast System. Proposed for permanent retention are recordkeeping copies of tropical cyclone storm wallets, which contain information concerning tropical storms and hurricanes.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–00–4, 34 items, 34 temporary items). Records of the National Ocean Service's Center for Operational Oceanographic Products and Services. Included are records relating to forecast predictions and measurement of water levels, tidal currents, water temperature and density, precipitation, and crustal movement, documentation identifying and locating bench marks, information systems that maintain observational data and provide real-time observations and forecasts, and electronic copies of records created using electronic mail and word processing.

4. Department of Homeland Security, Transportation Security Administration (N1–560–04–3, 11 items, 11 temporary items). Records relating to screening passengers and baggage. Included are such records as screening equipment alarm and testing records, calibration logs, shift summary reports, checkpoint rosters and logs, screener schedules, audio-visual recordings of baggage and cargo screening areas, imaged scans of bags and cargo, routine incident reports, and statistical reports. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any medium.

5. Department of Justice, Federal Bureau of Investigation (N1–65–04–3, 5 items, 5 temporary items). Individual security risk assessment case files pertaining to individuals with access to select biological agents and toxins and a related database. Also included are electronic copies of records created using electronic mail and word processing applications.

6. Federal Retirement Thrift Investment Board, Office of the General Counsel (N1–474–04–1, 3 items, 3 temporary items). Outputs, master files, and system documentation associated with the General Counsel's Tracking System, which tracks the status of litigation cases and other legal matters. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of Transportation, Federal Aviation Administration (N1–237–03–2, 9 items, 9 temporary items). Reports and other records relating to inspections of airway navigational equipment and facilities. Also included are electronic copies of records created using electronic mail and word processing.

8. Centennial of Flight Commission, Agency-wide (N1–220–04–2, 5 items, 3 temporary items). Housekeeping and facilitative records relating to such matters as travel, exhibit shipping, printing, and graphics, technical office copies of contract files, Web site administrative records, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as member lists, meeting minutes, reports, speeches, press releases, and Web site content files.

9. National Archives and Records Administration, Policy and Communications Staff (N1–64–04–4, 5 items, 5 temporary items). Records relating to fund raising activities undertaken to support museum programs, including electronic copies of records created using electronic mail and word processing.

10. Small Business Administration, Office of Administrative Services (N1–309–04–3, 6 items, 6 temporary items). Outputs, master files, backups, and documentation associated with an electronic system used for maintaining information concerning approved microloans. Also included are electronic copies of documents created using word processing and electronic mail.

Dated: March 26, 2004.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 04–7567 Filed 4–2–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and section 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning May 26, 2004. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before May 5, 2004.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–837–3290.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on May 26, 2004, consist of 15 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

1. *Subject Category:* Volume: 3 cubic feet.

Federal Government (FG)
FG 158 National Advisory Council on Education of Disadvantaged Children
FG 159 National Advisory Council on Educational Professions Development
FG 160 National Advisory Council on Extension and Continuing Education
FG 161 National Advisory Council on International Monetary and Financial Policies
FG 162 National Advisory Council on Supplementary Centers and Services
FG 225 United Planning Organization
FG 226 United Service Organization
FG 227 United States Advisory Commission on Information
FG 228 United States Advisory Commission on International Educational and Cultural Affairs
FG 229 United States Civil Service Commission
Judicial Legal (JL) Pardon Files (1973)
National Defense (ND)

2. *Transcripts of Telephone Conversations:* 10 Cubic Feet.

Approximately 20,000 pages of transcripts of Dr. Henry A. Kissinger's telephone conversations created during his tenure as Assistant to President Nixon's National Security Advisor and Security of State. These telephone transcripts proposed for release are from January 21, 1969 through August 8, 1974.

3. *White House Central Files, Name Files:* Volume: 1 Cubic Feet.

Nine files are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files.

The Name Files relating to the following 9 individuals will be made available with this opening.

Ailes, Roger; Brooke, Edward W.; Emenegger, Robert; Felci, Thomas; Green, Edith; Kerry, John; Krusten, Eva and Maarja; Zagorewicz, Thaddeus A.

4. *Previously Restricted Materials Volume:* 1 cubic foot

A number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, or in accordance with 36 CFR 1275.56 (Public Access Regulations).

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: March 30, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–7568 Filed 4–2–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Presidential Libraries; Disposal of Superseded Version of Clinton Administration Electronic Mail Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Presidential Records Act notice of disposal of superseded version of Clinton Administration electronic mail records; final agency action.

SUMMARY: The National Archives and Records Administration (NARA) has identified an incomplete version of Presidential records on electronic media, housed at Archives II in College Park, Maryland, as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes the records and our reasons for determining that the records have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation, in light of the fact that NARA is maintaining a more comprehensive set of the same records on a different set of electronic media.

EFFECTIVE DATE: The disposal will occur on or after June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Deputy Assistant Archivist for Presidential Libraries Sharon Fawcett, National Archives and Records Administration (NL), 8601 Adelphi Road, College Park, Maryland 20740–6001, tel. 301–837–3250, or by fax to 301–837–3199; or by e-mail to *sharon.fawcett@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA published a "Presidential Records Act notice of proposed disposal of superseded version of Clinton Administration electronic mail records" on December 30, 2003, in the **Federal Register** (68 FR 75286) for a 45 day comment period. NARA received two comments via e-mail, one from the President of the Terry County Historical Commission in Brownfield, Texas, and one from a private individual. The following is a summary of the comments and NARA's response:

Summary of Comments: Both commenters objected to the disposition of presidential records, and suggested that the records at issue may include important historical information and that such information may be lost if the data contained on the electronic media is subject to disposition. One commenter suggested that NARA might wish to donate the materials to a library rather than act to dispose of the electronic media.

NARA Response: As explained in detail in the original **Federal Register** notice, the copies of Presidential e-mail records contained on the 27,866 cartridges proposed for disposition constitute an incomplete and superseded subset of the Presidential e-mail record series from the Executive Office of the President (EOP) in the Clinton Administration that NARA has otherwise obtained in multiple electronic formats. Because NARA has a separate, more comprehensive set of Clinton e-mail records that includes all of the e-mails on these cartridges, no information will be lost by disposing of this incomplete set. Due to continuing restrictions on access to Presidential records, donation of the electronic media at issue to an outside institution is not legally permissible.

NARA Action: NARA will proceed to dispose of 27,866 volumes of class 3480 magnetic tape cartridges, consisting of an incomplete and superseded set of email records created from July 15, 1994 through December 1999, because NARA has determined that they lack

continuing administrative, historical, informational, or evidentiary value. As stated in our prior notice, NARA will be able to respond to future access requests for Clinton Administration e-mail records from the EOP through a separate database NARA received from the EOP. For further details, see the notice of proposed disposal at 68 FR 75286. This notice constitutes NARA's final agency action pursuant to 44 U.S.C. 2203(f)(3).

Dated: March 29, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–7569 Filed 4–2–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 1; Exemption

1.0 Background

Dominion Nuclear Connecticut, Inc. (the licensee) is the holder of Facility Operating License No. DPR–21, which authorizes the licensee to possess the Millstone Power Station, Unit 1. The license states, in part, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

The facility consists of a boiling water reactor located at the licensee's site in Waterford, Connecticut. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

2.0 Request/Action

Section 140.11(a)(4) of 10 CFR part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain primary liability insurance of $300 million [1] and to participate in a secondary insurance pool. All operating reactor sites carry $300 million in primary insurance coverage. All decommissioning plants except Millstone Power Station Unit 1 have been allowed to discontinue the secondary insurance coverage. Single unit decommissioning plants without operating reactors on the same site have been allowed to reduce their primary insurance coverage to $100 million. When Millstone Unit 1 receives its exemption it will still be covered by $300 million in primary insurance because two other operating reactors exist on the same site.

By letter dated September 28, 1999, as supplemented by a letter dated March 2, 2000, Northeast Nuclear Energy Company requested an exemption from 10 CFR 140.11(a)(4). Dominion Nuclear Connecticut, Inc., which assumed operating authority for Millstone Unit 1 in March 2001, provided a supplementary letter dated November 6, 2003. The licensee requested to withdraw from participation in the secondary insurance pool.

3.0 Discussion

The NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations which, pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

The financial protection limits of 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large, in part due to the high temperature and pressure of the reactor coolant system, as well as the inventory of radionuclides. In a permanently shutdown and defueled reactor facility, the possibility of accidents involving the reactor and its systems, structures and components, is eliminated. Further reductions in risk occur because (1) the decay heat from spent fuel decreases over time, which reduces the amount of cooling required to prevent the spent fuel from heating up to a temperature that could compromise the ability of the fuel cladding to retain fission products; and (2) the relatively short-lived radionuclides contained in the spent fuel, particularly volatile components such as iodine and noble gases, decay away, thus reducing the inventory of radioactive materials that are readily dispersible and transportable in air.

Although the risk and consequences of a radiological release decline substantially after a plant permanently defuels its reactor, they are not completely eliminated. There are potential onsite and offsite radiological consequences that could be associated with the onsite storage of the spent fuel in the spent fuel pool (SFP). In addition, a site may contain an inventory of radioactive liquids, activated reactor components, and contaminated materials. For purposes of modifying the amount of insurance coverage maintained by a power reactor licensee, the potential consequences, despite very low risk, are an appropriate consideration.

By letter dated March 2, 2000, the licensee submitted an analysis of the heatup characteristics of the spent fuel in the absence of SFP water inventory. The licensee concluded that air cooling of the fuel would be sufficient to maintain the integrity of the fuel cladding. The staff independently evaluated the licensee's analysis and found it to be acceptable.

The above analyses established that air cooling was adequate in the normal storage configuration, but events could change the configuration of stored fuel or otherwise degrade the effectiveness of cooling. This potential was addressed in NUREG–1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," which concluded that the probability of fuel uncovery is very low, and the probability of a random event that substantially reconfigures stored fuel such that cooling becomes inadequate is much lower still. Even with inadequate cooling, NUREG–1738 presented data indicating that fuel with over 5 years' decay time would require over 24 hours of complete adiabatic conditions (obstructed air flow) to reach temperatures associated with rapid cladding oxidation and release of fission products. The staff considers these conclusions applicable to Millstone Unit 1 since its spent fuel has been decaying since November 1995. A partial drain-down of the SFP could interfere with natural convection heat transfer and lead to a heatup of the spent fuel. However, if this were to occur, sufficient time is available for the licensee to take compensatory actions (such as refilling the SFP or spraying water on the spent fuel) thereby restoring necessary cooling. The staff judges that the analyses in NUREG–1738 are conservative and that there will be sufficient time for reasonable compensatory action for this small likelihood event.

The NUREG–1738 study did not evaluate the risk from malevolent acts. With regard to physical protection, the Millstone Unit 1 SFP is located within the overall Millstone site protected area (PA) which also contains operating Millstone Units 2 and 3. The licensee maintains a protective strategy for Units 2 and 3 that is in compliance with the requirements of 10 CFR 73.55 and interim compensatory measures issued by Order on February 25, 2002. By

[1] At the time that Northeast Nuclear Energy Company requested the exemption from secondary financial protection the requirement for primary insurance coverage was $200 million. The regulation now requires $300 million in primary coverage.

virtue of its location in the overall Millstone site PA (including Units 2 and 3), the Unit 1 SFP is accorded the substantial protection provided by the licensee's compliance with the Unit 2 and 3 requirements.

Based on insights from NUREG–1738 and other SFP analyses, the probability of a zirconium fire involving the Millstone Power Station, Unit 1 spent fuel is expected to be very low and well within the Commission's safety goals. The staff considers that the significant age of the spent fuel (over eight years), improved security measures at the site and the location of two operating reactors at the same site significantly reduce the risk of a spent fuel accident/incident at the Millstone Power Station Unit 1. For this reason, an accident/incident involving the spent fuel resulting in a large offsite release or the need to evacuate a large portion of the local population has a very low likelihood. Additionally, the fuel at Millstone Power Station, Unit 1 has decayed in excess of eight years, substantially reducing the potential offsite consequences of fuel damage. The potential consequences continue to decrease as time passes.

A licensee's liability for offsite costs may be significant due to lawsuits alleging damages from offsite releases. An appropriate level of financial liability coverage is needed to account for potential judgments and settlements and to protect the Federal government from indemnity claims. The staff believes that the Commission's requirement to maintain the $300 million in primary offsite financial protection at the Millstone site is sufficient for this purpose.

In a letter from the Executive Director for Operations to the Chairman of the Advisory Committee on Reactor Safeguards (ACRS) dated September 17, 2001, post-shutdown insurance requirements for decommissioning nuclear power plants were addressed. The staff and the ACRS agreed that onsite and offsite insurance coverage can be substantially reduced shortly after a facility permanently shuts down. The ACRS also accepted the staff's assessment that the primary insurance level be reduced to $100 million (the Millstone site maintains a primary insurance level of $300 million because of the two operating units) and that decommissioning licensees be released from participation in the secondary insurance pool.

The staff has completed its review of the licensee's request to withdraw from participation in the secondary insurance pool. On the basis of its review, the staff finds that the risk from random events associated with the spent fuel stored in the Millstone Power Station, Unit 1 SFP is very low and well within the Commission's safety goals. Additionally, the staff believes that the security measures already implemented for the Millstone site (collectively for Millstone Units 1, 2 and 3) including supplemental requirements issued by Order on February 25, 2002, provide reasonable assurance of protection against radiological sabotage and adequate protection of public health and safety and the common defense and security. Therefore, the licensee's proposed protection limits (*i.e.*, $300 million in primary insurance coverage) will provide sufficient insurance to recover from limiting hypothetical events, if they occur, and the underlying purpose of the regulation will not be adversely affected by the reduction in insurance coverage.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, an exemption to withdraw from the secondary insurance pool for offsite liability insurance is authorized by law and is otherwise in the public interest. Therefore, the Commission hereby grants Dominion Nuclear Connecticut, Inc., an exemption as described above from the secondary insurance requirements of 10 CFR part 140.11(a)(4) for the Millstone Power Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (65 FR 42038).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 2004.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–7555 Filed 4–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–76 and NPF–80, issued to STP Nuclear Operating Company (STPNOC or the licensee), for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would change the Technical Specification (TS) Surveillance Requirement (SR) 4.7.7.e.3 to add a footnote that will allow an evaluation for points that do not meet the 1/8 inch Water Gauge criterion of the current TS. The footnote would state that "Measured points at a positive pressure but less than 1/8 inch Water Gauge are acceptable if an evaluation, considering appropriate compensatory action, demonstrates that the condition meets the requirements of GDC [General Design Criterion]–19. The provisions of this note expire at 0800 on September 19, 2005."

During testing, STPNOC identified points on the boundary of the control room envelope that do not meet the 1/8 inch Water Gauge requirement of SR 4.7.7.e.3. On March 17, 2004, STPNOC requested and received from the NRC staff enforcement discretion from taking the TS actions required if SR 4.7.7.e.3 is not met. Based on information submitted as part of the enforcement discretion process, STPNOC committed to submit a proposed change to the TS.

Exigent approval of the proposed license amendments is needed in accordance with the enforcement discretion granted on March 17, 2004. Therefore, STPNOC has requested approval of this license amendment application on an exigent basis and issuance of the amendment as described in the terms of the enforcement discretion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. The Control Room ventilation system has no significant role as a potential accident initiator. The Control Room ventilation system continues to remain functional and provides positive pressure with respect to adjacent areas. The test results demonstrate that the operator dose limits of General Design Criterion 19 of 10 CFR 50, Appendix A are met.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different accident from any previously evaluated. No new accident precursors will be created by adding a provision to allow compensatory action to mitigate the margin lost if the control room envelope is degraded. The Control Room ventilation system continues to remain functional and provides positive pressure with respect to adjacent areas and to limit inleakage so that the operator dose limits of General Design Criterion 19 of 10 CFR 50, Appendix A are met.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in the margin of safety. Three trains of Control Room ventilation remain functional and continue to provide positive pressure with respect to adjacent plant areas. The proposed condition of the plant meets the operator dose limits of General Design Criterion 19 of 10 CFR 50, Appendix A.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/crf/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation

[1] To the extent that the applications contain attachments and supporting documents that are not publically available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact applicant's counsel and discuss the need for a protective order.

within one of the following groups, and all like subject-matters shall be grouped together.

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the applicant's safety analysis for the application (including issues related to emergency planning and physical security to the extent such matters are discussed or referenced in the application).

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a single representative who shall have the authority to act for the requestors/petitioners with respect to that contention within ten (10) days after admission of such contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to A. H. Gutterman, Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment dated March 18, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of March 2004.

For the Nuclear Regulatory Commission.

Michael K. Webb,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–7554 Filed 4–2–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15a–6; SEC File No. 270–0329; and OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. At an average cost per hour of approximately $100, the resultant total cost of compliance for the respondents is $600,000 per year (2,000 entities x 3 hours/entity × $100/hour = $600,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: March 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7602 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 24; SEC File No. 270–129; and OMB Control No. 3235–0126.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for an extension of the previously approved collection of information discussed below.

Rule 24 (17 CFR 250.24) under the Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79a *et seq.*) ("Act") requires the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order authorizing the transaction. The Commission needs the information under Rule 24 to ensure that the terms and conditions of its orders are being complied with, and the Commission uses the information to ensure appropriate compliance with the Act. The respondents are comprised of two groups of entities: (a) Registered holding companies under the Act and their direct and indirect subsidiaries and affiliates; and (b) holding companies exempt from the provisions of the Act by rule or order from all provisions of the Act, except section 9(a)(2). It is estimated that the total number of respondents is 140, and the total number of annual responses is 335. The Commission estimates that the total annual reporting burden under rule 24 is 1005 hours (*e.g.*, 335 filings × 3 hours = 1005 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. There is no requirement to keep the information in the forms confidential because it is public information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7603 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27825]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 30, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 20, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 20, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pepco Holdings, Inc., et al (70–10217)

Pepco Holdings, Inc. ("Pepco"), a registered holding company, 701 Ninth Street, 10th Floor, Suite 1300, Washington, DC 20068, Conectiv, a registered holding company and subsidiary of Pepco, and Atlantic City Electric Company ("ACE"), a public utility company and direct subsidiary of Conectiv, both of 800 King Street, Wilmington, Delaware 19899 (collectively "Applicants"), have filed an application-declaration ("Application") under section 12(d) of the Act and rules 44 and 54 under the Act.

Applicants seek authority for ACE to sell distribution facilities owned by ACE that operate at 14kV and lower voltages within the city limits of Vineland, New Jersey ("Vineland"). Vineland, through a municipally-owned utility known as the Vineland Municipal Electric Utility ("VMEU"), provides distribution services to approximately two-thirds of the residences and businesses operating within the city limits. ACE provides distribution services to the remaining customers, about 5,500 customers. If the sale is approved, substantially all customers within the city limits will be served by VMEU. ACE will retain its higher-voltage transmission facilities both within and outside the city limits, which are used to deliver bulk supplies of electricity throughout southern New Jersey, including to VMEU. In addition, ACE will retain some lower voltage facilities that will be located within and pass through Vineland but will not interconnect with the current or to-be-transferred VMEU facilities.

The specific utility distribution assets to be sold have a depreciated book value

of approximately $9.1 million (as of year end 2001) and include approximately 4,300 poles, less than 800 miles of primary and secondary wires attached to those poles, approximately 2,400 pad-mounted and pole-mounted transformers, street lights, underground conduit, customer service lines, and customer meters. Applicants state that detailed field inventory work is being done to identify the exact figures of the various types of assets to be transferred. Also being sold or transferred incidental to the sales transaction are accounts receivable from the transferred customers, various pole attachment agreements with third parties who have equipment attached to the transferred poles, easements and rights of way, and approximately 11 acres of unimproved land.

The total consideration for the transaction is $23.9 million, of which $9.1 million was the approximate net book value as of year-end 2001 of the assets to be transferred. Applicants are in the process of determining additions, prior retirements and post 2001 depreciation. A significant, but not specifically quantified, portion of the consideration is for the loss of future income from the customers being transferred.

The transaction is proposed following a condemnation action initiated by Vineland in a New Jersey state court. Various pleadings were filed by the city and ACE in which expert testimony was offered by both parties on the value of what was sought to be condemned based on a variety of valuation methods, including depreciated book value of the assets, replacement costs of the assets, the present value analyses of the future stream of income from the transferred customers, and other considerations. A settlement of the condemnation action was negotiated and executed on March 13, 2002. The settlement provided for the sale of assets and transfer of the customers from ACE to VMEU, effective as of a condemnation date to be selected. Between March 13, 2002, and the present, ACE has been constructing the facilities necessary to reconfigure its system and doing other work necessary to permit a smooth transition of customer records, customer billing and similar matters.

Under the transition plan, customers are being transferred to VMEU in advance of the transfer of title to the utility assets. Under the settlement agreement and the transition plan, Vineland has made payments to ACE totaling $12.4 million and is expected to make an additional payment of $11 million sometime in April 2004. Title to the utility assets has not been transferred but is expected to be transferred in early June 2004. A final payment of approximately $500,000 will be made six months after the transfer date.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7604 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Vaso Active Pharmaceuticals, Inc.; Order of Suspension of Trading

April 4, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vaso Active Pharmaceuticals, Inc. ("VAPH") because of questions regarding the accuracy of assertions by VAPH and by others, in press releases, its annual report, its registration statement and public statements to investors concerning, among other things: (1) FDA approval of certain key products, and (2) the regulatory consequences of the future application of their primary product.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST on Thursday, April 1, 2004 through 11:59 p.m. EDT, on Thursday, April 15, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–7786 Filed 4–1–04; 1:48 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49496; File No. SR–CHX–2003–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Stop Order Handling Rules

March 29, 2004.

On August 11, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CHX Article XXX, Rule 22, which governs the handling of stop orders. On January 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change,[3] and on February 17, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[4]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 26, 2004.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[8] which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 28, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the originally filed proposal in its entirety.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the originally filed proposal, as superceded by Amendment No. 1, in its entirety.

[5] *See* Securities Exchange Act Release No. 49283 (February 19, 2004), 69 FR 8998.

[6] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

requires that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the CHX's proposal to explicitly codify its policy for handling stop orders should help to provide guidance for its members regarding the handling and execution of such orders. The Commission also believes that defining and confirming that a stop order, once elected by a price penetration on a national securities exchange or association, will be treated as a market order for purposes of determining the execution price due the order, should conform the CHX's stop order handling rules to those of other markets, including the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("Amex"), and the Pacific Exchange, Inc.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–CHX–2003–25), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7601 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49497; File No. SR–NASD–2003–184]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Require Members To Review and Update Executive Representative Contact Information on a Quarterly Basis

March 29, 2004.

I. Introduction

On December 8, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to conduct a review, and, if necessary, update their executive representative contact information on a quarterly basis, specifically within 17 business days after the end of each calendar quarter. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2004.[3] The Commission received two comment letters on the proposal.[4] On March 17, 2004, the NASD filed a response to comments.[5] This order approves the proposed rule change.

II. Summary of Comments

The Commission received two comment letters on the NASD's proposal.[6] One commenter expressed full support for the proposal, but suggested the information become a line item on the quarterly FOCUS report, because "small firms seldom have executive management changes."[7] The other commenter found it "difficult to not agree" with the NASD's proposal, but noted a lack of instructions on how the NASD will implement the proposed rule change, and a concern that the costs of the proposed rule change might outweigh the benefits of the new requirement.[8] The commenter raised a number of specific questions, including:

- Is the lack of current information a quarterly problem?
- Do contact persons change that often?
- Is this a significant problem with small broker-dealers?
- What is the penalty if a member fails to comply for one quarter?
- If there is no response from the designated person, can the local district follow up to see if there has been a change?[9]

NASD, in response to the comments, stated the proposal "is essential to its ability to regulate the marketplace."[10] NASD believes that requiring members to review and update such information will "help ensure the accuracy of the information."[11]

NASD stated it will collect the information through NASD's Contact System ("NCS"), with all quarterly reviews and updates being performed on a central location in NCS. Additionally, NASD will require members "to perform all quarterly reviews and updates on the same schedule (*i.e.,* within 17 business days after the end of each quarter)."[12]

In response to a commenter's suggestion that NASD add the executive representative contact information directly to the FOCUS report, NASD "notes that the FOCUS report is an SEC document, requiring SEC action to be amended, and that any amendments to such form tend to be related to financial reporting requirements."[13] Instead, to help members comply with this new requirement, NASD is considering different methods of notifying members of the need to update their executive representative designation and contact information, including (1) reminders that are contemporaneous with the act of filing a quarterly FOCUS report; (2) periodic e-mail broadcasts distributed to members' executive representatives; and (3) individual e-mails to executive representatives.[14]

The NASD explained that failure to provide the requisite information during the 17 business days following each calendar quarter can result in disciplinary action by NASD.[15] NASD noted that, in SR–NASD–2004–025,[16] NASD seeks to amend its minor rule violation plan to address violations of the requirement that members provide or update contact information.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the

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[9] *See* NYSE Rule 13; Amex Rule 131; and Archipelago Exchange Facility Rule 7.31.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49110 (January 21, 2004), 69 FR 3973.

[4] *See* February 4, 2004 letter from Bradley C. McCurtain, Maine Securities Corporation ("MSC letter") (via e-mail), and February 16, 2004 letter from John J. Dardis, President, Jack Dardis & Associates, LTD ("Dardis letter") (via e-mail).

[5] *See* March 17, 2004 letter from Grace Yeh, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("NASD letter").

[6] *See* footnote 4, *supra.*

[7] MSC letter.

[8] Dardis letter.

[9] *Id.*

[10] NASD letter at 1.

[11] NASD has proposed similar quarterly contact information review requirements. *See* Securities Exchange Act Release Nos. 49246 (February 13, 2004), 69 FR 8255 (February 23, 2004) (SR–NASD–2003–183) (order approving continuing education contact person(s) quarterly update requirement), and 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (SR–NASD–2002–108) (proposing quarterly update of emergency contact information).

[12] NASD letter at 2.

[13] *Id.*

[14] *Id.*

[15] NASD letter at 3 ("NASD may use informal or formal means to enforce violations of its rules").

[16] The Commission has not yet published notice of SR–NASD–2004–025. Copies of the proposed rule change are available at the Commission and at the NASD.

comment letters, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [17] and, in particular, the requirements of section 15A(b)(6) of the Act,[18] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes the proposed rule change should assist the NASD in maintaining accurate information about its members' executive representative designation and contact information. Balancing the important role of an executive representative, the NASD's need for accurate information, and the NASD's efforts to minimize the burden of reporting on a quarterly basis the information described in this proposed rule change, the Commission believes the proposed rule change is reasonable and consistent with the purposes of the Act. The Commission also is satisfied that NASD has adequately addressed the commenters' concerns.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–2003–184) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7600 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49492; File No. SR–SCCP–2002–07]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to Ex-Clearing Account Transactions

March 29, 2004.

On December 26, 2002, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–SCCP–2002–07 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 14, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will add a provision to SCCP Rule 11 (Ex-Clearing Accounts) to enable SCCP participants to use an ex-clearing account when both sides of a securities transaction facilitated by the Philadelphia Stock Exchange ("Phlx") agree to transmit the transaction data to the National Securities Clearing Corporation ("NSCC") for clearance and settlement themselves, instead of transmitting the transaction data to NSCC through SCCP. Currently, SCCP participants that have agreed to settle a transaction outside any registered clearing agency may do so through an "ex-clearing account." With this rule amendment, the ex-clearing account may be used not only for transactions to be settled outside a registered clearing agency but also for transaction being sent to NSCC but not through SCCP. SCCP anticipates that certain Phlx members that participate in Phlx's program to trade Nasdaq securities will arrange for the clearance and settlement of their Nasdaq securities trading at Phlx directly with NSCC.[3] As before the amendment, SCCP makes no trade guarantee respecting any ex-clearing transaction.

II. Discussion

Section 17A(b)(3)(F) of the Act [4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this requirement because it will provide an additional mechanism for SCCP participants to have their securities transactions cleared and settled at NSCC, a registered clearing agency, which should promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act [5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2002–07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7539 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49491; File No. SR–SCCP–2001–09]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to Establishing Risk Management Procedures for Short Settlement Transactions

March 29, 2004.

On August 30, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–SCCP–2001–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and on October 9, 2001,[2] and September 20, 2002,[3] amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 27, 2004.[4] No comment letters were

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[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78o–3(b)(6).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49046 (Jan. 8, 2004), 69 FR 2167.

[3] The use of ex-clearing accounts is not limited to trading in Nasdaq securities and may be used in any situation that otherwise meets the criteria for the use of ex-clearing accounts.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] In October 2001, SCCP filed Amendment No. 1 to its original filing in order to replace its request for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) with a request for approval pursuant to Section 19(b)(2). Amendment No. 1 also revised SCCP Rule 9 to reflect the addition of the schedule for late margin call payments which had previously been approved by the Commission in another SCCP rule filing. Securities Exchange Act Release No. 44722 (Aug. 20, 2001), 66 FR 44661 (Aug. 24, 2001) [SR–SCCP–2001–04].

[3] In September 2002, SCCP filed Amendment No. 2 to its original filing whereby SCCP added the requirement that the SCCP Operations Committee or Board of Directors shall determine whether additional margin will be required prior to the settlement date for short settlement transactions.

[4] Securities Exchange Act Release No. 49079 (Jan. 14, 2004), 69 FR 3988.

received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will require SCCP specialists and alternate specialists ("SCCP margin members") to comply with certain new procedures when they engage in short settlement transactions.[5] Specifically, SCCP will add supplementary material to Rule 9 to require a SCCP margin member to notify SCCP on trade date ("T") whenever the SCCP margin member executes a short settlement transaction. This will enable SCCP to verify the SCCP margin member's net capital and net settlement cap, and to allow SCCP to calculate any net settlement obligations to the National Securities Clearing Corporation ("NSCC"). The new rule establishes a cap on net settlement obligations undertaken by any SCCP margin member of two times net capital. On the day after the trade date ("T+1"), SCCP will notify the SCCP margin member of any settlement obligations to NSCC exceeding the net settlement cap or whether the SCCP Board of Directors or Operations Committee has decided, in its sole discretion, that SCCP will finance the increased settlement obligations on behalf of the SCCP margin member.

Under the rule change, a SCCP margin member must obtain approval from the SCCP Board of Directors or Operations Committee to continue carrying any transactions having an aggregate value above the net settlement cap. A SCCP margin member may only carry a short settlement transaction with an aggregate value above the net settlement cap until the clearance and settlement of such transaction with NSCC. The SCCP Board of Directors or Operations Committee shall determine, in its sole discretion, whether SCCP will finance the short settlement transaction in excess of the margin member's net settlement cap. If the SCCP Board of Directors or Operations Committee, as the case may be, determines that SCCP will not finance such short settlement transaction, the SCCP margin member shall be required to pay 100 percent of its settlement obligations to SCCP above the net settlement cap. In this manner, SCCP will satisfy its obligations to NSCC for the additional clearing funds caused by a net settlement transaction.

The SCCP margin member shall have until 3 p.m. eastern time on the date following the initial notification (T+2) to provide sufficient funds to cover 100 percent of the settlement obligations above its net settlement cap. The net settlement cap related provisions are intended to require any SCCP margin member who executes a short settlement transaction to bear the credit risk from such transaction and to decrease associated risks to SCCP. Finally, the rule change reminds SCCP margin members that SCCP has the authority to initiate a disciplinary proceeding or to cease to act on behalf of such SCCP margin member if sufficient funds are not provided by the T+2 deadline. These provisions currently appear in SCCP Rules 9 and 15.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that the proposed rule change is consistent with this requirement because the new procedures should help protect SCCP from the credit risk and settlement risk associated with SCCP margin members' short settlement transactions. In the absence of explicit risk management procedures, SCCP would otherwise potentially face unlimited credit risk with its lending institutions and settlement risk in connection with its clearance and settlement of transactions with NSCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2001–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7540 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

[5] As defined in SCCP's proposed rule, "a short settlement transaction occurs when, for example, the buy (or sell) side of the trade ("opening transaction") settles on T+1 or T+2 and the sell (or buy) side of the trade ("covering transaction") settles on T+2 or T+3."

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P021]

State of Oregon (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 24, 2004, the above numbered declaration is hereby amended to include Crook and Grant Counties for Public Assistance in the State of Oregon as disaster areas due to damages caused by severe winter storms occurring on December 26, 2003 and continuing through January 14, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is April 19, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E4–741 Filed 04–02–04; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the April–June quarter of FY 2004.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. E4–739 Filed 4–2–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing

information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502–404.515 and 20 CFR 416.550–416.570—0960–0037.* Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare or Supplemental Security Income (SSI) overpayments.

Type of Request: Extension of OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 1,000,000 hours.

2. *Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR, Subpart A, 422.120—0960–0508.* SSA uses Forms SSA–L2765, SSA–L3365 and SSA–L4002 to request correct information when an employer, employee or self-employed person reports an individual's earnings without a Social Security Number (SSN) or with an incorrect name or SSN. The respondents are employers, employees or self-employed individuals who are requested to furnish additional identifying information.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,000,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 500,000 hours.

3. *Disability Hearing Officer's Decision—20 CFR 404.917 and 416.1417—0960–0441.* The Social Security Act requires that SSA provide an evidentiary hearing at the reconsideration level of appeal for claimants who have received an initial or revised determination that a disability did not exist or has ceased. Based on the hearing, the disability hearing officer (DHO) completes form SSA–1207 and all applicable supplementary forms (which vary depending on the type of claim). The DHO uses the information in documenting and preparing the disability decision. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The respondents are DHOs in the State Disability Determination Services (DDS).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 65,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 48,750 hours.

4. *Real Property Current Market Value Estimate—0960–0471.* The form SSA–L2794 is used to obtain current market value estimates of real property owned by applicants for, or beneficiaries of, SSI payments (or a person whose resources are deemed to such an individual). The value of an individual's resources, including non-home real property, is one of the eligibility requirements for SSI recipients. The respondents are individuals with knowledge of local real property values.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 1,813 hours.

5. *Function Report—Child: Birth to 1st Birthday (SSA–3375), Age 1 to 3rd Birthday (SSA–3376), Age 3 to 6th Birthday (SSA–3377), Age 6 to 12th Birthday (SSA–3378), and Age 12 to 18th Birthday (SSA–3379)—20 CFR 416.912—0960–0542.* State Agency adjudicative teams use the information gathered by these forms in combination with other medical function evidence to form a complete picture of a child's ability to function. This information is used to help determine if a child is disabled, especially in cases in which disability cannot be found on medical grounds alone. The respondents are applicants for Title XVI childhood disability benefits and their caregivers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 650,000

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 216,667 hours.

6. *Function Report—Third Party—20 CFR 404.1512 and 416.912—0960–0635.* The Social Security Act requires claimants to provide medical and other evidence to prove they are disabled. The Act also gives the Commissioner of Social Security the authority to make rules and regulations about the nature and extent of the evidence required to prove disability as well as the methods of obtaining this evidence. The information collected from form SSA–3380 is needed to determine disability under Title II (Old-Age, Survivors and Disability Insurance (OASDI) and/or Title XVI (SSI). The form records information about the disability applicant's illnesses, injuries, conditions, impairment-related limitations, and ability to function. The respondents are individuals who are familiar with the applicant's disability, impairment, limitations, and ability to function.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,500,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 750,000 hours.

7. *Application for Benefits Under the Italy-U.S. International Social Security Agreement—0960–0445—20 CFR 404.1925.* The information collected on Form SSA–2528 is required by SSA in order to determine entitlement to benefits. The respondents are applicants for old-age, survivors or disability benefits, who reside in Italy.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 67 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the addresses listed above.

1. *Youth Transition Process Demonstration Evaluation Data Collection*—To further the President's New Freedom Initiative goal of increasing employment of individuals with disabilities, SSA plans to award seven cooperative agreements for the purpose of developing service delivery systems to assist youth with disabilities to successfully transition from school to work. SSA is funding two coordinated contracts to provide (1) technical assistance and (2) an evaluation. SSA will work with the Evaluation Contractor to use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions, impacts and benefits of the demonstration. Evaluation data will be used by the projects to improve the efficiency of the project's operations; use of staff; linkages between the project and the agencies through which comprehensive services are arranged; and specific aspects of service delivery to better meet the needs of the targeted population. This type of project is authorized by sections 1110 and 234 of the Social Security Act. The respondents will be youth with disabilities who have enrolled in the project.

Type of Request: New Collection.

Number of Respondents: 5,000.

Frequency of Response: 4.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 5,000 hours.

2. *Certification of Contents of Document(s) or Record(s)—20 CFR 404.715 ff.—0960–NEW.* SSA must secure evidence necessary for individuals to establish rights to benefits. Some of the types of evidence needed are evidence of age, relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, state record custodians, and other custodians of evidentiary documents to record information from documents and records to establish these types of evidence. SSA employees use this form but it also is used by state record custodians and other custodians of evidentiary documents.

Type of Request: Existing form not previously cleared by OMB.

Number of Respondents: 4,200.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 700.

3. *Questionnaire for Children Claiming SSI Payments—0960–0499.* The information collected on form SSA–3881 is used by SSA to evaluate disability in children who apply for SSI payments. The respondents are individuals who apply for SSI payments for a disabled child.

Number of Respondents: 253,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 126,500 hours.

4. *Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330 and 404.339—0960–0019.* SSA uses the information collected on form SSA–781 to decide if "in care" requirements are met by non-custodial parent(s), who is filing for benefits based on having a child in care. The respondents are non-custodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,333 hours.

5. *Social Security Benefits Applications—20 CFR Subpart D, 404.310–404.311 and 20 CFR Subpart F, 404.601–401.603—0960–0618.* One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. In addition to the traditional paper application, SSA has developed various options for the public to add convenience and operational efficiency to the application process. The total estimated number of respondents to all application collections formats is 3,843,369 with a cumulative total of 995,457 burden hours. The respondents are applicants for retirement insurance benefits (RIB), disability insurance benefits (DIB), and/or spouses' benefits.

Please note that burden hours for applications taken through the Modernized Claims System (MCS) are accounted for in the hardcopy collection formats. MCS is an electronic collection method that mirrors the hardcopy application formats. Guided by the MCS collection screens, an SSA representative interviews the applicant and inputs the information directly into SSA's application database. MCS offers the representative prompts based on the type of application being filed and the circumstances of the applicant. These prompts facilitate a more complete initial application, saving both the agency and applicant time. MCS also propagates identity and similar information within the application, which saves additional time.

Type of Request: Revision of an OMB-approved information collection (ISBA collection only).

Internet Social Security Benefits Application (ISBA)

ISBA, which is available through SSA's Internet site, is one method that an individual can choose to file an application for benefits. Individuals can use ISBA to apply for RIB, DIB and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the information collected by ISBA to entitle individuals to RIB, DIB, and/or spouses' benefits. The respondents are applicants for RIB, DIB, and/or spouses benefits.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

Paper Application Forms

Application for Retirement Insurance Benefits (SSA–1)

The SSA–1 is used by SSA to determine an individual's entitlement to retirement insurance benefits. In order to receive Social Security retirement insurance benefits, an individual must file an application with SSA. The SSA–1 is one application that the Commissioner of Social Security prescribes to meet this requirement. The information that SSA collects will be used to determine entitlement to retirement benefits. The respondents are individuals who choose to apply for Social Security retirement insurance.

Number of Respondents: 1,460,692.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 255,621 hours.

Application for Wife's or Husband's Insurance Benefits (SSA–2)

SSA uses the information collected on Form SSA–2 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced.

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,000 hours.

Application for Disability Insurance Benefits (SSA–16)

Form SSA–16–F6 obtains the information necessary to determine whether the provisions of the Act have been satisfied with respect to an applicant for disability benefits, and detects whether the applicant has dependents who would qualify for benefits on his or her earnings record. The information collected on form SSA–16 helps to determine eligibility for Social Security disability benefits. The respondents are applicants for Social Security disability benefits.

Number of Respondents: 1,513,677.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 504,559 hours.

6. *Application Statement for Child's Insurance Benefits—20 CFR 404.350–404.368, 404.603, and 416.350—0960–0010.* Title II of the Social Security Act provides for payment of monthly benefits to the children of an insured retired, disabled, or deceased worker, if certain conditions are met. The form SSA–4–BK is used by SSA to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

Type of Request: Extension of an OMB-approved information collection.

	Life claims	Death claims
Number of Respondents	925,000	815,000.
Frequency of Response	1	1.
Average Burden Per Response	10.5 minutes	5.5 minutes.
Estimated Annual Burden	161,875 hours	74,708 hours.

7. *Modified Benefit Formula Questionnaire-Foreign Pension—0960–0561.* The information collected on form SSA–308 is used by SSA to determine exactly how much (if any) of the foreign pension may be used to reduce the amount of the Social Security retirement or disability benefit under the modified benefit formula. The respondents are applicants for Social Security retirement/disability benefits.

Type of Request: Extension of OMB approved Information collection.

Number of Responses: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

8. *Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024.* SSA uses the information collected on form SSA–787 to determine an individual's capability, or lack thereof, to handle his or her own benefits. This information also provides SSA with a means of selecting a representative payee, if this proves necessary. The respondents are beneficiaries' physicians.

Type of Request: Revision of an OMB-approved information collection.

Please Note: The **Federal Register** notice published on February 4, 2004 at 69 FR 5380, cited the "type of request" as an "Extension of an OMB-approved information collection." Since that time, SSA decided to revise the form to make minor changes, so we are submitting this information collection as a revision.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

9. *Physical Residual Functional Capacity Assessment and Mental Residual Functional Capacity Assessment—20 CFR 404.1545 and 416.945—0960–0431.* The information collected by form SSA–4734 is used in the adjudication of disability claims involving physical and/or mental impairments. The form provides the State DDS with a standardized data collection format to evaluate impairment(s) and to present findings in a clear, concise, and consistent manner. The respondents are State DDSs administering Title II and Title XVI disability programs.

Type of Request: Extension of an OMB-approved information collection.

Please Note: The **Federal Register** notice published on February 4, 2004 at 69 FR 5380, cited the "type of request" as an "Extension of an OMB-approved information collection." Since that time, SSA decided to revise the form so we are submitting this information collection as a revision.

	SSA–4734–BK	SSA–4734–SUP
Number of Respondents	1,625,095	796,770.
Frequency of Response	1	1.
Average Burden Per Response	20 minutes	20 minutes.
Estimated Annual Burden	541,698 hours	265,590 hours.

Total Estimated Annual Burden: 807,288 hours.

Dated: March 30, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–7535 Filed 4–2–04; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Sierra Leone has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Sierra Leone qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective April 5, 2004.

FOR FURTHER INFORMATION CONTACT: William Jackson, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist U.S. Customs and Border Protection in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Sierra Leone as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Sierra Leone has taken, I have determined that Sierra Leone has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Sierra Leone" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 04–7636 Filed 4–2–04; 8:45 am

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2003 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice specifies the date of announcement of the results of the preliminary review of those petitions.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446, and the facsimile is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

In a **Federal Register** notice dated August 14, 2003, USTR initiated the 2003 ATPA Annual Review and announced a deadline of September 15, 2003 for the filing of petitions (68 FR 48657). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203 (c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a **Federal Register** notice dated November 13, 2003, USTR published a list of the responsive petitions filed pursuant to the announcement of the annual review. The Trade Policy Staff Committee (TPSC) is conducting a preliminary review of these petitions. 15 CFR 2016.2(b) provides for announcement of the results of the preliminary review on or about December 1. 15 CFR 2016.2(b) also provides for modification of the schedule if specified by **Federal Register** notice. In a **Federal Register** notice dated December 30, 2003, USTR modified the schedule for this review, specifying that the results would be announced on or about March 31, 2004. In light of progress being made with respect to the matters addressed by the petitions, this notice further modifies the date for the announcement of the results of the preliminary review to May 15, 2004. The results of the preliminary review will be published in the **Federal Register** on or about that date.

Bennett M. Harman,

Deputy Assistant United States Trade Representative for Latin America.

[FR Doc. 04–7639 Filed 4–2–04; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Bahrain Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Bahrain Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested

members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested no later than April 30, 2004.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Jennifer Prescott or David Brooks, Office of Environment and Natural Resources, USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002 provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13141–Environmental Review of Trade Agreements (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.* USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the authority delegated by the President in Executive Order 13277 (67 FR 70305).

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0099@ustr.gov* with the subject line: "Bahrain Interim Environmental Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–7638 Filed 4–2–04; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advance Notice of Potential Expansion of Coverage of WTO Government Procurement Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Advance Notice of Potential Expansion of Coverage of WTO Government Procurement Agreement.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476.

Background

Currently, there are 28 Parties to the WTO Government Procurement Agreement (GPA). They are: Austria, Belgium, Canada, Denmark, European Communities, Finland, France, Germany, Greece, Hong Kong China, Iceland, Ireland, Israel, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Netherlands with respect to Aruba, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, United Kingdom, and the United States. Suppliers from each of those countries are able to participate, on a reciprocal basis, in the government procurement of the other countries, subject to the terms and conditions set out in the GPA. The terms include a list of the entities from each country that are subject to GPA rules.

On May 1, 2004, 10 countries will join the European Communities (EC). They are: the Czech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia and Slovak Republic ("new EC Member States"). The EC has notified the other GPA Parties of its intention that the GPA will be binding on the new EC Member States as of May 1, 2004. The EC is consulting with the other GPA Parties with regard to the lists of the entities of the new EC Member States that would be subject to the GPA rules.

Future Action

When the WTO Committee approves the application of the GPA to the 10 new EC Member States, U.S. suppliers will be able to participate in the government procurement of those countries. Similarly, based upon a determination that the U.S. Trade Representative will make under the Trade Agreements Act of 1979, as amended, suppliers from the new EC Member States will be eligible to participate in U.S. government procurement under the same terms and conditions as suppliers from the countries that are currently covered by the GPA. That determination will be published in the **Federal Register** prior to May 1, 2004.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–7637 Filed 4–2–04; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Intend To Rule on Application 04–02–C–00–ACY To Impose and Use a Revenue From a Passenger Facility Charge (PFC) at Atlantic City International Airport, Egg Harbor Township, NJ; Correction

Correction: This is to advise that the number for our Notice to Intend to Rule on Application 04–02–C–00–ACY to Impose and Use a revenue from a Passenger Facility Charge (PFC) at Atlantic City International Airport, Egg Harbor Township, New Jersey, published in the **Federal Register** on March 19, 2004, should read 04–03–C–00–ACY.

All the other associated information published on that day remains unchanged, including the date for

receiving comments on or before April 19, 2004.

If there are any questions regarding this correction, please contact Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, telephone no. (516) 227–3812. The application may be reviewed in person at this same location.

Issued in Garden City, New York on March 25, 2004.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 04–7338 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Extension of Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for extension of a waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

Union Pacific Railroad

[Docket Number FRA–2002–12836]

The Union Pacific Railroad (UP) and the National Railroad Passenger Corporation (Amtrak) seek to extend a waiver of compliance from certain sections of 49 CFR parts 216, Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment; 217, Railroad Operating Rules; 218, Railroad Operating Practices; 229, Railroad Locomotive Safety Standards; 233, Signal Systems Reporting Requirements; 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of part 236; 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances; and 240, Qualification and Certification of Locomotive Engineers, under section 211.51, Tests, to allow them to develop, implement and test technology designed to prevent train collisions, overspeed violations, and protect roadway workers.

On October 16, 2002, the Federal Railroad Administration (FRA) conditionally approved the joint Union Pacific Railroad (UP) and National Railroad Passenger Corporation (Amtrak) Petition for Waiver of Compliance FRA–2002–12836.

The waiver is for a program that will enable the industry to demonstrate and validate the technology, referred to as Positive Train Control, (PTC) before it is implemented in a larger scale.

The PTC program will be tested and demonstrated on approximately 118.4 miles of UP track in the State of Illinois with the following conditions:

1. The submittal of, and adherence to, a test plan for each segment being tested that has been reviewed and will be monitored by the FRA. The test plan is subject to approval by the FRA test monitor with respect to the safety of railroad employees and members of the public. The test monitor will provide advice with respect to tests that may bear favorably on FRA's review of the train control system.

2. The railroad must place appropriately equipped flaggers in each lane of traffic at all public and private highway-rail grade crossings, or close any private crossing when an appropriately equipped flagger cannot be provided, along the demonstration route whenever a run of 80 mph or above is being conducted.

3. Operate under absolute block conditions for each run of 80 mph or higher or under any conditions where wayside signal indications will not be observed.

4. Inspect high-speed demonstration corridor with FRA's automated track geometry vehicle to ensure track compliance with FRA's Track Safety Standards. (Initial inspection was completed.)

5. Waiver is granted until August 31, 2004, unless the UP notifies the FRA of an earlier termination date.

These tests must be made in a safe and reliable manner, and to that end FRA would expect UP and Amtrak to support each other and to provide for the continuity of operating employees involved in these tests.

These conditions were transmitted to Amtrak and the UP Railroad in a letter from Mr. Grady Cothen to Mr. Dennis Duffy on October 22, 2002. A specific listing of the details of the approval concerning applicable 49 CFR parts appears in the **Federal Register**, Vol. 67, No. 146, Tuesday, July 30, 2002, pages 49382 through 49386.

Test trains have been operated at speeds over 110 mph in this territory in full compliance with the waiver herein described. Much was accomplished in these tests. Much data has been collected, and the System Integrator of this system is currently deeply involved in the integration of the system.

An exhaustive investigation of all possible failure modes of the system is being conducted in order to be able to certify the fail-safety of the system. This process has turned out to require a significantly longer time frame than originally anticipated. In view of this, the railroad is now requesting an extension of Condition Number 5 so that a request is made that Condition Number 5 " Waiver is granted until August 31, 2004 unless the UP notifies the FRA of an earlier termination date" be changed to read "Waiver is granted until December 31, 2005."

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–12836) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The

Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on March 30, 2004.

John Leeds,

Director for Safety Analysis.

[FR Doc. 04–7621 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–17192

Applicant: Alaska Railroad Corporation, Mr. Russell J. Frazier, Director Signal and Telecommunications, P.O. Box 107500, Anchorage, Alaska 99501.

Alaska Railroad Corporation (ARR) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR 236.110, to the extent that each test record, need not be signed by the person making the inspection or test, in lieu of implementing an electronic system to record and maintain signal inspection records that provide inherent security measures that uniquely identify the person as the author of the record. Once a record is entered and verified, it cannot be modified. In conjunction with this relief, ARR also requests the utilization of an electronic system for recording and maintaining applicable inspection and test records as defined in 49 CFR part 234, subject to approval by the Associate Administrator for Safety, as required by § 234.273.

Applicant's justification for relief: ARR believes that the electronic system will serve the best interest of ARR and the Federal and State Inspection Authorities that are required to inspect records, and anticipate the system will provide many benefits, including:

- Improved availability of test records
- Improved management reporting of compliance
- Improved consistency for filing records
- A reduction in the need for paper documentation

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 29, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–7543 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 23, 2004 (69 FR 3425).

DATES: OMB approval has been requested by May 5, 2004.

FOR FURTHER INFORMATION CONTACT: Gayle Dalrymple at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–5559. 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Exemption from the Make Inoperative Prohibition.

OMB Number: 2127–0635.

Type of Request: Extension of a currently approved collection.

Abstract: On February 27, 2001 NHTSA published a final rule (66 FR 12638) to facilitate the modification of motor vehicle so that persons with disabilities can use the vehicle. The regulation is found at 49 CFR part 595 Subpart C—Vehicle Modifications to Accommodate People with Disabilities. This final rule included two "collections of information," as that term is defined in 5 CFR part 1320 Controlling Paperwork Burdens on the Public: modifier identification and a document to be provided to the owner of the modified vehicle stating the exemptions used for that vehicle and any reduction in load carrying capacity of the vehicle of more than 100 kg (220 lbs).

Affected Public: Business that modify vehicles, after the first retail sale, so that the vehicle may be used by persons with disabilities.

Estimated Total Annual Burden: 770 hours and $9.40.

ADDRESSES: Send comments, within 30 days, to the Office of Information and

Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it prior to May 5, 2004.

Issued on: March 30, 2004.

Claude H. Harris,

Director, Office of Crash Avoidance Standards.

[FR Doc. 04–7545 Filed 4–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 943, 943–PR, 943–A, and 943A–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 943, Employer's Annual Tax Return for Agricultural Employees, 943–PR, Planilla Para La Declarcion Anual De La Contribucion Federal Del Patrono De Empleados Agricolas, 943–A, Agricultural Employer's Record of Federal Tax Liability, and 943A–PR, Registro De La Obligacion Contributiva Del Patrono Agricola.

DATES: Written comments should be received on or before June 4, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Employer's Annual Tax Return for Agricultural Employees (Form 943), Planilla Para La Declarcion Anual De La Contribucion Federal Del Patrono De Empleados Agricolas (Form 943–PR), Agricultural Employer's Record of Federal Tax Liability (Form 943–A), and Registro De La Obligacion Contributiva Del Patrono Agricola (Form 943A–PR).

OMB Number: 1545–0035.

Form Numbers: 943, 943–PR, 943–A, and 943A–PR.

Abstract: Agricultural employers must prepare and file Form 943 and Form 943–PR (Puerto Rico only) to report and pay FICA taxes and income tax voluntarily withheld (Form 943 only). Agricultural employees may attach Forms 943–A and 943A–PR to Forms 943 and 943–PR to show their tax liabilities for semiweekly periods. The information is used to verify that the correct tax has been paid.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 392,443.

Estimated Time Per Respondent: 12 hr., 59 min.

Estimated Total Annual Burden Hours: 5,098,899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 30, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–7647 Filed 4–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Thrift Financial Report: Schedule CMR

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final notice.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS has solicited public comments on the proposal and is now providing a summary of those comments as well as providing final notice of the initial phase of its revised data collection.

DATES: Submit written comments on or before May 5, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition,

interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at marilyn.burton@ots.treas.gov, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Thrift Financial Report: Schedule CMR (Consolidated Maturity/Rate).

OMB Number: 1550–0023.

Form Number: OTS Form 1313: Schedule CMR of the Thrift Financial Report (TFR).

Description: Currently, Schedule CMR provides all the institution-level inputs to OTS's Net Portfolio Value (NPV) model, the agency's key resource for measuring interest-rate risk. The NPV model is a key component of OTS's safety and soundness monitoring.

Overview

OTS, in a **Federal Register** notice published March 20, 2003, requested comment on a proposed replacement schedule—"Risk Exposure Data" (Schedule RED)—for the current Consolidated Maturity and Rate form (Schedule CMR) of the Thrift Financial Report (TFR). Throughout this document, "CMR" refers to the current schedule, and "RED" refers to the proposed replacement. In response to comments received, OTS has decided to (1) scale back on the scope and depth of the proposed Schedule RED, and (2) employ a gradual, or phased-in, implementation strategy. The scaling back was in response to many commenters suggesting that full implementation of RED was too burdensome. We are dropping our request for the various credit risk variables that appeared in the original proposal, as well as the requirement for coupon buckets finer than 100 basis points. In addition, because some commenters suggested that the cost of implementation could be significant, we are proposing to implement RED in two phases. In the first phase, firms will not be required to provide any new information. All information now being supplied relating to derivatives and off-balance sheet positions, as well as any information now being supplied in Supplemental Reporting of Assets and Liabilities and any information now being supplied in Supplemental Reporting of Market Value Estimates, will all be supplied in the Schedule RED format. In effect, RED will replace all the current supplemental reporting schedules and will eliminate the need for CMR fields 801–903. All other data will continue to be reported in the CMR format until the implementation of the second phase. Phase I will be implemented for the quarter ending March 31, 2005. Naturally, OTS intends to continue to make improvements to the existing NPV model during the next year to improve the quality of the model outputs within the limits of current institutional inputs. In the meantime, the industry (and OTS) will gain experience with the new reporting format without the burden of developing the systems to report additional data.

In the second phase, firms will be asked to provide all their information in the Schedule RED format, plus some additional data necessary to improve the quality of valuations in those areas where the quality of information collected under CMR could be improved. The amount of additional data will be less than what was called for in the original proposal. In addition, OTS intends only to ask for data that can be utilized by the NPV model to produce improved valuations. Prior to implementing phase two, OTS will formally propose the associated reporting changes and will once again request comment on those changes. In addition, OTS will strive to provide 12 months advance notice prior to implementation of phase two.

Discussion of Comments on the Proposed Schedule RED

OTS published the request for comment in the **Federal Register** on March 20, 2003 (68 FR 13758), and received 15 comment letters from 13 thrifts and 2 trade groups. OTS has the following response to the comments:

Most of the commenters agreed that the RED proposal contains some significant enhancements over the current Schedule CMR. Supportive comments focused on flexibility and simplification of reporting, and the potential for more accurate NPV estimates. However, most commenters suggested important areas where the RED proposal might be improved. Objections focused on the burden of the increased volume of data to be requested under RED, the cost of computer systems conversions, and potential privacy issues.

A. *Reporting Burden:* Most commenters addressed Schedule RED's reporting burden. While a majority of commenters anticipate that RED would reduce burden in at least some areas—through simplification and flexibility—a majority also saw potential problems in the proposal, in many cases due to the increase in data volume under RED. Specific concerns suggested include:

- Data volume would require institutions to devote additional time for data entry and data review under RED.
- The proposed breakout of positions into 25 basis point coupon-rate buckets is superfluous.
- The conversion of thrift information technology (IT) systems to support RED will be costly. (Some asserted that the costs outweigh the potential benefits.)
- The proposed credit-risk fields are superfluous for measuring interest-rate risk.
- Many of the Loan Memoranda fields are superfluous.
- Electronic bulk imports of data are preferable to cell-by-cell manual data entry.

While RED should simplify reporting and add flexibility, it will increase the volume of data. Indeed, increased granularity will be one of the main sources of improvements to NPV model accuracy. Nevertheless, OTS acknowledges that there will be transition costs, and OTS has carefully reviewed and noted the specific concerns of commenters about reporting burden.

For these reasons, OTS has decided to adopt a gradual, or phased-in, approach to implement Schedule RED. The first phase—to commence with the first reporting cycle (March) of 2005 would call for the conversion of four different sections of the current CMR Schedule into the RED format. These sections are: (1) Financial Derivatives and Off-Balance-Sheet Positions, CMR fields 801–903; (2) Supplemental Reporting for Assets and Liabilities, columns OAL010–OAL100; (3) Supplemental Reporting of Market Value Estimates, columns RMV010–RMV100; and (4) Supplemental Reporting of Financial Derivatives and Off-Balance-Sheet Positions, columns OBS010–OBS060.

The effect of this first phase will be to introduce the industry to the RED reporting without actually requiring any additional data. This will minimize the impact of the transition to the industry

by limiting the initial burden to adjusting to the new format, and allowing a full year for that adjustment. During that period OTS will be making improvements to its existing legacy model, preparing its systems to work with RED-formatted data, and developing other model-related system enhancements and products. The second stage of the Schedule RED phase-in will not be implemented before March 2006.

The proposed optional credit risk variables have been dropped from the Schedule RED proposal. OTS will carefully monitor industry and NPV-model performance—in particular the effects of Basel II—and may choose to re-propose these features at a later date, provided there is a compelling regulatory need.

B. *Accuracy:* Several commenters agreed that RED data will enhance valuations, and that such accuracy and detail are desirable. A number of commenters noted specific advantages of the proposed new RED over the current CMR:

- The current CMR fails to specify the market index driving coupon rates on adjustable-rate mortgages (ARMs), whereas RED will rectify this shortcoming.
- The current CMR must pool all fixed-rate mortgages (FRMs) with "extreme" coupons—*i.e.*, weighted-average coupons (WACs) above 8% or below 5%.
- The current CMR pools ARM loans and adjustable-rate mortgage-backed securities (MBSs), thus losing accuracy in the averaging process.

OTS is aware of this market-index problem for ARMs in CMR, and looks forward to the ability, wherever possible, to value mortgages relative to their true underlying index, rather than a proxy. This is an example of a limitation that can be best solved only with better institutional input data. Resolution of these shortcomings will occur during the second stage of the Schedule RED phase-in.

OTS recently shifted the fixed-rate mortgage coupon buckets to better reflect current market conditions, although the total number of WAC buckets for FRMs remains five. Full implementation of RED in the second phase will eliminate this sort of reprogramming, because RED will then define a general rule for specifying buckets, rather than specifying a limited number of buckets directly. Non-mortgage assets will benefit most from the improved granularity deriving from RED's new bucketing rules. All non-mortgage assets are currently pooled, regardless of coupon rate.

OTS agrees that the pooling of ARM loans and ARM MBSs necessarily diminishes the accuracy of published NPV results. The full RED, once implemented, will distinguish whole loans and MBSs.

On the other hand, a number of commenters suggested some possible shortcomings in RED and/or CMR:

- Multifamily ARM valuations are somewhat inaccurate, valuing even newly issued loans at a significant discount to par.
- Increasing granularity of thrift inputs would not make the NPV model more accurate, since other inputs (*e.g.*, discount rates and prepayment speeds) are significant.
- The benefits of pooling—namely the stability of valuations implied by averaging away idiosyncratic noise—would be lost in a move to finer-grained data. Conversely, the pooling of prime and subprime loans could skew the valuations for both. Lastly, NPV output should match the granularity of RED inputs.
- RED should collect the WAC for non-teaser ARMs.

OTS acknowledges that the valuation of multifamily ARMs has been a problem in the past, caused largely by the application of a generic, industry-wide margin in the discounting of cash flows. Since the second quarter of 2003, however, this valuation procedure has been revised such that firm-specific margins and firm-specific base lending rates are now used instead.

OTS acknowledges that there are areas of the NPV model unrelated to CMR/RED that will benefit from critical review. Nevertheless, the refinement of cash-flow estimates enabled by more granular input data will provide important improvements in accuracy. OTS is also reviewing other aspects of the NPV model to identify potential enhancements independent of RED/CMR.

At this time, OTS does not foresee requiring granularity finer than 100 basis points (contrasted with the 25 basis points maximum granularity suggested in the original proposal) when it sets forth the reporting requirements for phase two of the RED implementation. As noted below, the industry will be given ample advanced notification of those requirements.

The pooling comment is accurate for inputs subject to significant idiosyncratic noise. Where noise is not a significant concern, the additional detail should be beneficial. For example, disaggregating positions by coupon should help—albeit imperfectly—separate prime and subprime loans. OTS expects that RED submissions will contain examples of both "noisy" and "quiet" portfolios. OTS agrees that NPV outputs should, in principle, be available at the level of granularity supplied in the RED inputs, and is working to achieve that. However, nothing in the full RED will prevent users from considering only aggregated results. That is, it will still be possible to sum or average results after the fact to achieve any desired degree of pooling.

The suggestion to collect WACs for non-teaser ARMs is sound, and has now been incorporated into the full RED design and should appear in the second stage. Indeed, adding a "Current Coupon" field for non-teaser ARMs allows us to simplify the proposal by combining the teaser and non-teaser ARM tables in the RED proposal into a single table for all single-family ARM tables. This again is something that will not be implemented until the second stage of RED implementation.

C. *Privacy:* Several commenters expressed concern about the confidentiality of the data collected, particularly credit-quality attributes and account-level data.

OTS is aware of the need to protect the confidentiality of thrift data. Access to institution-level RED data is restricted to OTS staff with a need to know. Data access is maintained on a secure intranet, and any offsite transmissions are encrypted. Data are backed up nightly, with backups archived at a secure offsite facility. OTS emphasizes that RED does not collect account numbers or other information revealing the identity of the account holder. Finally, OTS is removing credit-risk fields from the current proposal, and thus their confidentiality is not a concern.

D. *Miscellaneous Changes:* A number of comments do not cluster neatly under the foregoing topics, and are addressed individually here.

- OTS should define a new deposit account in more "retail" terms than the current legalistic definition that relies on the account-holders' names.

OTS will investigate the potential ramifications of this for our other systems, and for other thrifts, and will consider this change at a later time.

- Will OTS make a data-extraction tool available?

Due to the broad diversity and idiosyncracy of end-user systems, OTS is not in a position to provide a data-extraction tool that would access all the necessary data.

- Cash and money-market assets should be pooled with office premises, Miscellaneous I assets, etc., since all of these are currently carried through by

the model without a mark-to-market valuation.

The fully-implemented RED design will indeed collect all of these asset types within the same table, but will ask for more granularity by product type than is currently being requested under CMR. There is considerable variability among these products in terms of liquidity and the ability to define cash flows. Although historically they have been regarded as relatively negligible components of the asset portfolio, many of them (*e.g.*, term Fed funds or zero-coupon securities) will be easy to mark to market. OTS views the resulting additional accuracy as desirable.

• One commenter suggested that thrifts should be allowed to self-value mortgages serviced for others. Another felt the OTS should encourage large thrifts to abandon the NPV model altogether, in favor of internal models.

OTS believes that valuations should occur within the NPV model wherever practicable, since this puts all valuations on the same basis, and provides a potentially useful benchmark for self or vendor valuations.

• Would multifamily mortgages be reported with "Other Commercial Property?" Multifamily loans on RED should be reported under "Other fixed-[or adjustable-] rate real-estate loans."

• When would RED become effective?

OTS's RED implementation schedule calls for a first phase RED to be implemented by March 2005. This will allow one year for implementation of this phase by both OTS and thrifts. As indicated in detail above, this first phase will involve only the re-formatting of certain existing schedules into the RED format, with no new data required. A second phase will incorporate moving the remaining areas of CMR into the RED format. This stage will call for the additional data discussed above. We are tentatively scheduling the implementation of the second stage for March 2006. While a firm date for the second stage has not yet been set, the industry should rest assured that at least a full year's advance notice will be given. In the meantime, the industry will have gotten some experience with the RED format from the first phase implementation.

• Six commenters objected to acceleration of the filing due date for the TFR from the current 45 days to 30.

The accelerated filing proposal is unrelated to the RED proposal, but rather was part of a separate public comment process (68 FR 3318), providing notice of intent to make certain changes to the Thrift Financial Report (TFR) effective March 2004. In a **Federal Register** notice dated September 2, 2003, OTS announced it will not change TFR filing due dates. The filing due date for Schedule CMR will remain the same, 45 days after the close of the quarter.

Type of Review: Revision.

Affected Public: Savings Associations.

Estimated Number of Respondents: 890.

Estimated Frequency of Response: Four times per year.

Estimated Burden Hours per Response: 12 hours.

Estimated Total Burden: 42,720 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–7640 Filed 4–2–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Securities Offering Disclosure

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 5, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Securities Offering Disclosure.

OMB Number: 1550–0035.

Form Numbers: SEC Forms S–1, S–2, S–3, S–4, S–8, SB–1, SB–2, 144 and OTS Forms OC and G–12.

Regulation requirement: 12 CFR part 563g.

Description: OTS collects information for disclosure in securities offerings by savings associations related directly to U.S. Securities and Exchange Commission requirements for offering of information to potential securities purchasers. OTS's statutory authority for collecting this information is under the Home Owners' Loan Act of 1933, and is pursuant to an exemption from registration for savings associations in the Securities Act of 1933. The Securities Offering regulation, 12 CFR part 563g, sets standards for disclosure in connection with a purchase or sale of securities to provide information to shareholders and potential investors to make informed investment decisions and to reduce the risk of a fraudulent securities offering that could adversely affect the public or the safety and soundness of a savings association.

In addition, on July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002, Public Law No. 102–204 (2002) (the "Sarbanes-Oxley Act"). Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class

of securities registered under sections 12(b) or 12(g) of the Exchange Act, or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act. All registered savings associations are public issuers for purposes of the law.

Type of Review: Extension, with revision, of a currently approved collection.

Affected Public: Savings Associations.

Estimated Number of Respondents: 15.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 994 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–7641 Filed 4–2–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Deposits

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 5, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to Joseph_F._Lackey_Jr@omb.eop.gov; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Deposits.

OMB Number: 1550–0092.

Form Number: N/A.

Regulation requirement: 12 CFR 557.20; 12 CFR 230.3, 230.4, 230.5, and 230.6.

Description: 12 CFR Part 557 relies on the disclosure requirements applicable to savings associations under the Federal Reserve Board's Regulation DD (12 CFR part 230). The information required by Regulation DD is needed by OTS in order to supervise savings associations and to develop regulatory policy.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 923.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Respondent: 1,484 hours.

Estimated Total Burden: 1,370,040 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–7642 Filed 4–2–04; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Monday,
April 5, 2004

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–22; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–22. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–22 and specific FAR case number(s). Interested parties may also visit our website at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Government Property Disposal	1995–013	Parnell
II	General Provisions of the Cost Principles	2001–034	Loeb
III	Unique Contract and Order Identifier Numbers	2002–025	Zaffos
IV	Unsolicited Proposals	2002–027	Wise
V	New Mexico Tax—United States Missile Defense Agency	2003–020	Loeb
VI	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–22 amends the FAR as specified below:

Item I—Government Property Disposal (FAR Case 1995–013)

This final rule amends FAR Parts 1, 2, 8, 45, 49, 52, and 53 to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

Item II—General Provisions of the Cost Principles (FAR Case 2001–034)

This final rule amends the FAR to revise certain general provisions of the cost principles contained at FAR 31.201–1, Composition of total cost; FAR 31.201–2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The final rule also adds the definition of "direct cost" and revises the definition of "indirect cost" at FAR 2.101, Definitions, to be consistent with the terminology used in the cost accounting standards (CAS). The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

The interim rule published in the **Federal Register** at 68 FR 56679, October 1, 2003, is converted to a final rule, without change, to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

Item IV—Unsolicited Proposals (FAR Case 2002–027)

This final rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost related or price related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

Item V—New Mexico Tax—United States Missile Defense Agency (FAR Case 2003–020)

This final rule amends FAR 29.401–4(c) to incorporate the Defense Missile Agency as a participating agency within the terms and conditions stipulated in FAR 29.401–4, New Mexico Gross Receipts and Compensating Tax. This provision aims to eliminate the double taxation of Government cost reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in the State of New Mexico and for which such property will pass to the United States.

Item VI—Technical Amendments

This amendment makes editorial changes at FAR 52.212–5(b)(24) and 52.213–4(a)(1)(iv).

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–22 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR)

and other directive material contained in FAC 2001–22 are effective April 5, 2004, except for Items I, II, and IV which are effective May 5, 2004.

Dated: March 26, 2004.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: March 19, 2004.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: March 19, 2004.

Anne Guenther,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 04–7404 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 8, 45, 49, 52, and 53

[FAC 2001–22; FAR Case 1995–013; Item I]

RIN 9000–AH60

Federal Acquisition Regulation; Government Property Disposal

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–22, FAR case 1995–013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 1438, January 10, 2000, to simplify the management and disposition of Government property in the possession of contractors. The FAR Council agreed to publish a final rule revising FAR Subpart 45.6, entitled Reporting, Reutilization, and Disposal. Comments on the other portions of the proposed Part 45 rewrite are still being evaluated.

Forty-five respondents provided public comments. Nineteen of the forty-five respondents provided comments on the reporting, reutilization, and disposal of Government property provisions in the proposed rule, and those comments were considered in drafting the final rule. Consideration of these comments resulted in only minor changes to the rule. The streamlining of the disposal process and the reductions in reporting requirements made it imperative that we finalize this FAR subpart. The resolution of the significant categories of comments concerning reporting, reutilization, and disposal of Government property follows:

Summary of Comments Received/ Disposition

PR: Proposed Rule; FR: Final Rule

1. *PR: 45.001, 52.245–2, and 52.245–7. FR: 45.601, 52.245–2(i), 52.245–5(i).* Recommend you revisit your definition of "sensitive property" and separate the different types of materials, similar to the separate inventory disposal schedules called for in 52.245–2(g)(3)(B)(iii) and 52.245–7(g)(3)(B)(iii). Nonconcur. Under this final rule, the inventory disposal schedules do not separate the different types of materials.

2. Allow contractors to return Government property to the Government and have the Government dispose of the property. Nonconcur. Government cost would be prohibitive if all property was returned (shipping, packing, crating & handling).

3. *PR: 45.506. FR: 45.603, 45.604–2.* Do not allow unilateral abandonment by the Government on contractor premises. Nonconcur. Abandonment is consistent with current policy and to do otherwise would increase costs to the Government.

4. *FR: 45.605–1, 52.245–2(i)(8)(iii), 52.245–5(i)(8)(iii).* Do not impose demilitarization on the contractor. Nonconcur. Items have to be demilitarized. It is more cost effective for the Government to require the contractor to perform or be responsible for demilitarization of the property on a reimbursable basis than ship the property to the Government and have the Government demilitarize the property.

5. *PR: 45.507–2(b)(1). FR: 45.606–3(b), 52.245–2(i)(8)(i), 52.245–5(i)(8)(i).* Disposition of scrap. Recommend changing to 30 days. Partially concur. We revised the timeframe for disposition instructions from 60 days to 45 days.

6. *PR: 52.245–2(g)(2)(i). FR: 45.602–1(c), 52.245–2(i)(2)(i), 52.245–5(i)(2)(i).* Delete. The cost burden of attempting to have vendors accept "returned inventory" far out-weighs the costs saved in this exercise. Nonconcur. Government experience has shown that property is returned both before and after being reported excess to plant clearance demonstrating cost recovery (it only applies to new property). This is the current FAR requirement.

7. *PR: 52.245–2(g)(4)(i). FR: 52.245–2(i)(4)(i), 52.245–5(i)(4)(i).* Thirty days following the contractor's determination that a Government property item is no longer required for performance of the contract is too frequent. Nonconcur. We believe these timeframes are reasonable and will instill discipline to the process and is consistent with commercial practices. This is an effort to expedite the process and reduce costs.

8. *PR: 52.245–2(g)(5). FR: 52.245–2(i)(5), 52.245–5(i)(5).* Quantity reductions found after inventory schedule has been submitted should not be grounds for rejecting an inventory schedule. Nonconcur. The contractor is expected to submit accurate inventory disposal schedules. Adjustment or rejections are based on the severity or number of errors on a particular schedule.

9. *PR: 52.245–2(g)(6). FR: 52.245–2(i)(6), 52.245–5(i)(6).* The proposed statement reads; "The Contractor shall provide the Plant Clearance Officer (PLCO) at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule." Delete timeframe. Revise statement to read: "The Contractor shall provide the Plant Clearance Officer written notice of its intent to remove a property item from an approved inventory disposal schedule." Nonconcur. The property belongs to Government agencies. The time is needed to coordinate with the owning agency. It is a Government decision to delete property off the schedule.

10. Several contractors questioned why or how the Government performed internal Government processes. Response. After reviewing these comments the Government decided the Government internal processes are appropriate as stated.

11. *PR: 45.507. FR: 45.606.* Several comments addressed the requirement to screen scrap. Once scrap is reported, the Government makes the decision whether to screen, sell or abandon scrap. Not all scrap is screened.

12. *PR & FR: SF 1428.* Several comments addressed making the use of electronic submission of inventory disposal schedules mandatory. Other comments addressed the difference in distribution of paper copies and electronic copies. Nonconcur. To allow flexibility, the Government provides for electronic or paper copy submission of inventory disposal schedules. The paper copy process requires separate inventory disposal schedules in order for the different agencies to screen the items.

13. *PR: 52.245–7(g)(9). FR: 45.604–4, 52.245–2(i)(9); 52.245–5(i)(9).* The proposed statement reads; "The Contractor shall credit the net proceeds from a disposal of Government property in accordance with instructions received from the PLCO." Revise the statement to read: "* * * PLCO or in the case of scrap, in accordance with the Contractor's approved Property procedures." Same as 52.245–2. Nonconcur. This is an internal Government decision. The Government needs to reserve the right to direct proceeds.

14. *PR: 52.245–2(g)(10). FR: 52.245(i)(10), 52.245–5(i)(10).* The proposed statement reads "The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (g)(4) of this clause." Revise the statement to read: "* * * to the Contractor as soon as reasonably possible." Same as 52.245–7. Nonconcur. Prime contractor should set limits to subcontractor, so that prime is in compliance.

15. *PR & FR. 49.108–4(a)(1)(ii)(B).* 45.504 reference is inconsistent. Make it 45.602–4. Concur. Changed in final rule to 45.602–3.

16. *PR: 45.001. FR: 2.101.* Definition of "plant clearance officer." The proposed definition fails to address that the plant clearance officer is a Government representative and is an authorized representative of the contracting officer. Concur. Made change.

17. *PR: 45.505–1.* Placed within 45.5, the proposed language has no force or effect. Relocate the provisions at proposed 45.505–1 within the applicable contract clauses at 52.245–xx. Concur. Removed from 45.505–1 and included in the appropriate provisions.

18. *PR: 45.507–2(a). FR: 52.245–2(i)(1)(i)(B), 52.245–5(i)(1)(i)(B).* This is not contractually binding. Relocate within the applicable clauses at 52.245. Concur. Coverage in clauses.

19. *PR: 45.001, 52.245–2, 52.245–7.* Add definition of "Export control and high risk property." Export controlled information means unclassified U.S. Government information if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives. In suggesting the definition below it is recognized that the sensitive property definition is similar. Would suggest an incorporation of the two or additions of the portions of the high risk personal property definition that are not already included in the sensitive property definition. "'High risk personal property' means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapons components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information." Nonconcur. Subject is not referred to in text. Therefore, no definition is required.

20. *PR: 52.245–2(g)(8). FR: 52.245–2(i)(8), 52.245–5(i)(8).* Include a requirement that the contractor be notified in the disposal instructions that the property may be subject to U.S. Export Control regulations. Should also be a part of subcontract terms and conditions. Nonconcur. The PLCO will notify the contractor concerning disposal instructions of property that is subject to U.S. Export Control regulations.

21. *PR: 45.506(c). FR: 45.604–2.* Amend to permit agencies to abandon property that requires demilitarization if the contractor consents by adding; "to perform all required demilitarization at its own expense is a condition for the abandonment of the property." Concur. See 52.245–2(i)(8) and 52.245–5(i)(8)(iii).

22. *FR: 45.606, 52.245–2(i)(1), 52.245–5(i)(1).* Several contractors made comments relating to approved scrap procedures such as eliminating these procedures. Nonconcur. Not all contractors have approved scrap procedures.

23. *PR: 45.505–2, 52.245–2(g)(6), and 52.245–7(g)(6). FR: 45.602–1, 52.245–2(i)(6), 52.245–5(i)(6).* Replace (c) with: "If, before final disposition, the contractor becomes aware that any items of contractor acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity." Nonconcur. This is a contractor option before reporting property for disposal, after reporting it for disposal it is a Government action.

24. *PR: 45.507–1. FR: 45.606–1.* Revise proposed statement to read: "Contractors may dispose of scrap left-over from the normal production process that has no further intrinsic value without Government approval provided the scrap does not contain precious metals, hazardous materials or wastes, nuclear materials, or classified materials; or requires demilitarization." Nonconcur. It is impracticable to list all items that could be included. See definition of scrap in 2.101.

25. *PR: 52.245–2(g). FR: 52.245–2(i).* Change (g) to read: "Except as provided in paragraphs (c)(8), (g)(1), (g)(2), and (g)(8) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer." Concur. Clause updated.

26. *PR: 45.001. FR: 45.601.* Recommend you delete this definition, Demilitarization, in its entirety and substitute in lieu thereof the definition of demilitarization found in the DoD Federal Acquisition Regulation Supplement. Nonconcur. The definition is more understandable and current.

27. *PR: 45.505–3. FR: 45.602–2.* This section should be consistent with GSA's requirement at 41 CFR 102–36.250. Nonconcur. 41 CFR 102–36.250 deals with excess property and is a different subject.

28. *PR: 45.505–4. FR: 45.602–3.* Screening requirements should be consistent with the provisions as contained in 41 CFR 101–43.4801, which excludes items that cost under $5,000. Nonconcur. FPMR has been changed. A low acquisition cost is no longer an exception to screening.

29. *PR: 45.506. FR: 45.603.* The Government should be able to abandon certain property items where there is not a good reason for the Government to retain title. 40 U.S.C. Sec. 483(h) does not require an item to be excess in order to be abandoned. This provision of the law provides for abandonment based upon commercial value or estimated cost of continued care and handling. Nonconcur. 40 U.S.C. Sec 483(h) (now 40 U.S.C. 527) deals with excess property.

30. *PR: 45.507–2. FR: 45.606–2.* The approved scrap procedure should facilitate the efficient disposition of scrap while requiring the contractor to provide the Plant Clearance Officer the necessary information to make reasonable determinations. Requiring the contract number for each item of scrap necessitates the generation of a different scrap list for each contract, causing excessive administrative burden on the Government and the contractor. The quantity of scrap is generally measured in short tons—most contractors do not have the equipment to weigh scrap. Nonconcur. Scrap reimbursement is allocable to specific contracts.

31. *PR: 52.245–2(g)(7). FR: 52.245–2(i)(7), 52.245–5(i)(7).* Storage is a given requirement under the contract. When business conditions require the movement of stored items, this cost is merely a cost of doing business. These costs should always be allowable unless they are deemed unreasonable. Nonconcur. It is unreasonable to move property without prior approval of the Government after the property is submitted for disposal.

32. *PR: 52.245–2(h). FR: 52.245–2(j), 52.245–5(j).* Should provide for a request for abandonment in an effort to reduce cost of dismantlement, movement, storage and administration. Nonconcur. The FAR does not prohibit the contractor from asking that property be considered for abandonment.

33. Move property disposal into the FPMR. No need for the new SF 1428, because of the SF 120. Remove revisions to 45.505–3. Make 45.506 and 45.508–1 similar to 101–45.9. Nonconcur. It is not cost effective to change the current electronic processing systems just for convenience. The FAR allows for both electronic and paper forms to be used.

34. *PR: 52.245–2(g). FR: 52.245–5(i).* This paragraph gives disposal authority to the PLCO. Clarify what authority the CO has or does not have to authorize disposal (including abandonment). Concur. Changed definition of plant clearance officer. The CO has the authority but must follow the statutory and regulatory requirements (screening).

35. *PR: 52.245–2(g)(2)(i). FR: 52.245–2(i)(2)(i).* Address what must be done with proceeds if the fair market value of unused property returned to the supplier is higher than the original cost. Nonconcur. In the cases where the fair market value is higher than the original cost it will be addressed at the agency level because it creates an allocation issue rather than a regulatory issue.

36. *PR & FR SF 1428.* Require adequately detailed or commercial descriptions on inventory schedules for excess property and revise schedule format to allow space for this. Nonconcur. Item 14 of the SF 1428 requires description in sufficient detail.

37. Prescribe the length of the agency screening period as a maximum time period. Concur. The time period is 20 days.

38. *PR: 45.506. FR: 45.603.* Add language on abandonment of excess property or reference FPMR 101–45.900 to require a reviewing official for abandonment determinations, to require public notice and to define the circumstances when public notice is not required. Nonconcur. This is not a commercial practice and would add another layer of bureaucracy to the process with little added value.

39. Abandonment in lieu of sale of surplus property should reference FPMR 101–44.7 for details of requirements for abandonment of surplus property in lieu of sale. Nonconcur. The specific requirements are stated in 45.603 and 45.604–2.

40. Government involvement in disposal of other than scrap should be limited to assisting in the disposal process. Nonconcur. This is Government property and disposal must be at Government direction.

41. Demilitarization. The proposed rewrite does not adequately address the longstanding issue of demilitarization. Perhaps this is more appropriate for a DFARS revision, but references to demilitarization in the FAR should be deleted until a final policy is in place within DoD. Nonconcur. Needs to be addressed not just for DoD, but also NASA, DOE, Coast Guard, etc.

42. *PR: 1.106. FR: 1.106, 45.605.* Delete reference to SF 1424. See Part 53. SF 1424 is still being used. FAR 45.509 which is appropriately titled "Inventory Disposal Reports." Concur. SF 1424 is still being used. Language at 1.106 was updated for OMB clearance purposes.

43. *PR: 45.505–1(a). FR: 45.602–1(c).* Text states: Make reasonable efforts to return Government property that was acquired or produced by the contractor and is no longer needed for contract performance to the appropriate supplier or to use the property in performance of other contracts * * * #1036 no longer makes reference to restocking charges or other charges for returns. Needs to be added. This definition is not consistent with the definition for GP. Concur. Added restocking charge.

44. *PR: 45.505–2. FR: 45.602–1.* Please consider slight reduction in some PLCO schedule acceptance times. Concur. It now reads 10 days.

45. *PR: 52.245–2(g)(7)(ii). FR: 52.245–2(i)(7)(ii).* To "If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract." Add: ", unless incurred due to the Government's failure to provide disposal instructions within 120 days of receipt of * * *" Nonconcur. Covered in paragraph 52.245–2(g)(7)(i) (now 52.245–2(i)(7)(i).

46. *PR: 45.505–4. FR: 45.602–3(b)(4).* Paragraph 45.505–4(b)(4) addresses the screening of hazardous waste. This should read "property contaminated with hazardous wastes." Waste of any kind should not be screened. If hazardous waste is a by-product of work performed on a contract, the contract should require its disposal in accordance with applicable Federal, State, and local laws. Nonconcur. Contractors must dispose of Government property in accordance with the new 45.602. The contractor is responsible for contractor-owned property and must dispose of it in accordance with applicable Federal, State, and local laws.

47. *PR: 45.506. FR: 45.603.* Paragraph 45.506(a)(2) provides a cost based justification for using abandonment, destruction, or donation in lieu of sale. The justification, as written, does not take into account that there are costs associated with these disposal alternatives. The Defense Reutilization and Marketing Service has long recognized that fact and has developed an economy formula to address the costs of disposal alternatives. There are times when a net sale loss can be less costly to the Government than exercising a disposal alternative. Therefore, this paragraph should be rewritten to require consideration of the cost of disposal alternatives in the decision process. Nonconcur. The plant clearance officer already considers these costs in all disposal determinations.

48. *PR: 45.506(c). FR: 45.604–2.* Paragraph (c) states: "* * * property that requires demilitarization may be abandoned. * * *" Property that requires demilitarization should not be abandoned unless the required demilitarization has been performed. Paragraph should read: "* * * property that has been demilitarized may be abandoned." Concur in principle. See new paragraph 45.604–2.

49. *PR: 45.508. FR: 45.604–2.* The title of this section is incorrect. Part of the disposal process involving surplus property has already occurred at this point. On the 42nd day of screening, property that has not been selected for transfer to another Federal agency becomes surplus property which then becomes available for donation to eligible donees * * *. This section addresses what is done to surplus property that survives donation screening. Therefore, the section should be titled "Disposal of undonated surplus Government property." 45.508(a), first sentence, should be written to read, "this section addresses the disposal of Government property * * * that, * * * has not been reutilized, transferred, or donated to eligible donees (*i.e.*, public airports, service educational activities, and State agencies for surplus property). The parenthetical phrase "(hereafter referred to as surplus property)" at the end of the sentence should be deleted. Concur. Corrected text, but not the title. "Undonated" was not added to the title because once an item has been donated it is no longer available for disposal.

50. *PR: 45.505–3. FR: 45.602–2.* Clarify. Subparagraph (b) seems to indicate that donation of educationally useful property to schools and non-profit organizations can only be accomplished after all Federal agencies have declined the property. However, subparagraph (c) identifies other agency screening as lower in priority than donation to schools or non-profit organizations. Nonconcur. The order of priority of 45.602–2 is clear as written.

The other comments concerning the other subparts of FAR Part 45 were conflicting and a satisfactory resolution of those comments was not attained. Therefore, the other subparts of FAR Part 45 are not being revised by this final rule. This final rule amends the FAR by—

- Replacing five inventory disposal forms with one;
- Clearly delineating the responsibilities of the plant clearance officer;
- Decreasing the time for Government acceptance of inventory disposal schedules from 15 to 10 days;
- Decreasing the time for Government inventory verification from 30 days to 20 days;
- Decreasing agency and Federal screening time from 90 days to 46 days;
- Eliminating the Government requirement to screen most scrap;
- Allowing contractors with approved scrap procedures to submit scrap lists instead of inventory disposal schedules;
- Eliminating reporting of production scrap for contractors with approved scrap procedures;
- Authorizing contractors to dispose of production scrap without Government approval under most conditions; and
- Placing contractor responsibilities in clauses rather than the FAR text.

Some terminology found in the FAR, while appearing in the Federal Property Management Regulation (FPMR) and Federal Management Regulation (FMR), may not have the same intended meaning or be used in the same manner (*e.g.*, reutilization, disposal, disposition). For this reason, the Councils are committed to the future establishment of a separate case for the purpose of reviewing and resolving possible inconsistent uses of terminology between the FAR and the FMR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This final rule amends the FAR to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors. No comments concerning the Initial Regulatory Flexibility Analysis were received that related to disposition of Government property. We estimate that approximately 6,850 contractors have Government property in their possession. Approximately 65 percent of DoD's contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated that the DoD ratio of small to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, it is estimated that approximately 4,450 small businesses have Government property in their possession that at some point will need to be dispositioned. This final rule decreases the impact of the current FAR provisions by simplifying recordkeeping requirements, reducing the number of records to be maintained, reducing the number of reports to be submitted, and replacing five inventory disposal schedules with one inventory disposal schedule. The rule also streamlines the Government property disposal process by decreasing agency, Federal, and donation screening times and virtually eliminating the requirement to screen scrap. The records and reports required by this rule have been reduced to the minimum necessary to assure compliance with the Government's statutory accountability and disposal requirements.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0075 on October 28, 2003. This final rule reduces the annual reporting burden for disposal of Government property.

List of Subjects in 48 CFR Parts 1, 2, 8, 45, 49, 52, and 53

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 8, 45, 49, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 8, 45, 49, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Revising the OMB Control Number, "9000–0015" at entries for FAR segments SF 1428 and SF 1429, to read "9000–0075"; and

■ b. Removing the FAR segment entries and their corresponding OMB Control Numbers at SF 1423, 1424, 1426, 1427, 1430, 1431, 1432, 1433, and 1434.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definitions "Excess personal property,"

"Personal property," "Plant clearance officer," "Scrap," and "Termination inventory," to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

* * * * *

Excess personal property means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

* * * * *

Personal property means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

(1) Battleships;

(2) Cruisers;

(3) Aircraft carriers;

(4) Destroyers; and

(5) Submarines.

* * * * *

Plant clearance officer means an authorized representative of the contracting officer appointed to disposition property accountable under Government contracts.

* * * * *

Scrap means personal property that has no value except its basic metallic, mineral, or organic content.

* * * * *

Termination inventory means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.101 [Reserved]

■ 4. Remove and reserve section 8.101.

8.104 [Amended]

■ 5. Amend section 8.104 by removing "Federal Property Management Regulations (41 CFR 101–43.312)" and adding "Federal Management Regulations (41 CFR 102–36.90)" in its place.

PART 45—GOVERNMENT PROPERTY

■ 6. Amend section 45.102 by revising paragraph (g) to read as follows:

45.102 Policy.

* * * * *

(g) Ensure maximum practical reutilization of Government property (see 45.602) within the Government.

45.501 [Amended]

■ 7. Amend section 45.501 by removing the definition "Scrap."

■ 8. Revise Subpart 45.6 to read as follows:

Subpart 45.6—Reporting, Reutilization, and Disposal

Sec.

Subpart 45.6—Reporting, Reutilization, and Disposal

45.600 Scope of subpart.

This subpart establishes policies and procedures for the reporting, reutilization, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (*e.g.*, termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

As used in this subpart—

Common item means material that is common to the applicable Government contract and the contractor's other work.

Demilitarization means rendering a product designated for demilitarization unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of General Services (GSA).

45.602 Reutilization of Government property.

This section is applicable to the reutilization, including transfer and donation, of Government property that is not required for continued performance of a Government contract. Except for 45.602–1, this section does not apply to scrap other than scrap aircraft parts.

45.602–1 Inventory disposal schedules.

(a) Plant clearance officers should review and accept, or return for correction, inventory disposal schedules within 10 days following receipt from a contractor. Schedules that are completed in accordance with the instructions for Standard Form 1428 should be accepted.

(b) Plant clearance officers shall—

(1) Use Standard Form 1423 to verify, in accordance with agency procedures, accepted schedules within 20 days following acceptance;

(2) Require a contractor to correct any discrepancies found during verification;

(3) Require a contractor to correct any failure to complete predisposal requirements of the contract; and

(4) Provide the contractor disposition instructions for property identified on an acceptable inventory disposal schedule within 120 days. A failure to provide timely disposition instructions might entitle the contractor to an equitable adjustment.

(c) Contractors shall obtain the plant clearance officer's approval to remove Government property from an inventory disposal schedule.

(1) Plant clearance officers should approve removal when—

(i) The contractor wishes to purchase a contractor-acquired or contractor-produced item at acquisition cost and credit the contract;

(ii) The contractor is able to return unused property to the supplier at fair market value and credit the contract (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices);

(iii) The Government has authorized the contractor to use the property on another Government contract; or

(iv) The contractor has requested continued use of Government property, and the plant clearance officer has consulted with the appropriate program and technical personnel.

(2) If the screening process (*see* 45.602–3) has not begun, the plant clearance officer shall adjust the schedule or return the schedule to the contractor for correction. If screening has begun, the plant clearance officer shall promptly notify the activity performing the screening that the items should be removed from the screening process.

45.602–2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions using the highest priority method appropriate for the property. Authorized methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the agency (see 45.603 for circumstances under which excess personal property may be abandoned, destroyed, or donated);

(b) Transfer of educationally useful equipment, with GSA approval, to other Federal agencies that have expressed a need for the property;

(c) Transfer of educationally useful equipment to schools and nonprofit organizations (*see* Executive Order 12999, Educational Technology: Ensuring Opportunity For All Children In The Next Century, April 17, 1996), and 15 U.S.C. 3710(i);

(d) Reuse within the Federal Government; and

(e) Donation to an eligible donee designated by GSA.

45.602–3 Screening.

The screening period begins upon the plant clearance officer's acceptance of an inventory disposal schedule. The plant clearance officer shall determine whether standard or special screening is appropriate and initiate screening actions.

(a) *Standard screening.* The standard screening period is 46 days.

(1) *First through twentieth day—Screening by the contracting agency.* The contracting agency has 20 days to screen property reported on the inventory disposal schedule for: Other use within the agency; transfer of educationally useful equipment to other Federal agencies that have expressed a need for the property; and transfer of educationally useful equipment to schools and nonprofit organizations if a Federal agency has not expressed a need for the property. Excess personal property, meeting the conditions of 45.603, may be abandoned, destroyed, or donated to public bodies. No later than the 21st day, the plant clearance officer shall submit four copies of the revised schedules and Standard Form (SF) 120, Report of Excess Personal Property, or an electronic equivalent to GSA (see 41 CFR 102–36.215).

(2) *Twenty-first through forty-sixth day (21 days concurrent screening plus 5 days donation processing).*—(i) *Screening by other Federal agencies.* GSA will normally honor requests for transfers of property on a first-come-first-served basis through the 41st day. When a request is honored, the GSA regional office shall promptly transmit to the plant clearance officer an approved transfer order that includes shipping instructions.

(ii) *Screening for possible donation.* Screening for donation is also completed during days 21 through 41. Property is not available for allocation to donees until after the completion of screening. Days 42 through 46 are reserved for GSA to make such allocation.

(3) *Screening period transfer request.* If an agency receives an intra-agency transfer request during the screening periods described in paragraph (a)(2) of this subsection, the plant clearance officer shall request GSA approval to withdraw the item from the inventory disposal schedule.

(b) *Special screening requirements.*—(1) *Special tooling and special test equipment without commercial components.* Agencies shall follow the procedures in paragraph (a) of this subsection. This property owned by the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA) may be screened for reutilization only within these agencies.

(2) *Special test equipment with commercial components.*—(i) Agencies shall complete the screening required by paragraph (a) of this subsection. If an agency has no further need for the property and the contractor has not expressed an interest in using or acquiring the property by annotating the inventory disposal schedule, the plant clearance officer shall forward the inventory disposal schedule to the GSA regional office that serves the region in which the property is located.

(ii) If the contractor has expressed an interest in using the property on another Government contract, the plant clearance officer shall contact the contracting officer for that contract. If the contracting officer concurs with the proposed use, the contracting officer for the contract under which the property is accountable shall transfer the property's accountability to that contract. If the contracting officer does not concur with the proposed use, the plant clearance officer shall deny the contractor's request and shall continue the screening process.

(iii) If the property is contractor-acquired or -produced, and the contractor or subcontractor has expressed an interest in acquiring the property, and no other party expresses an interest during agency or GSA screening, the property may be sold to the contractor or subcontractor at acquisition cost.

(3) *Printing equipment.* Agencies shall report all excess printing equipment to the Public Printer, Government Printing Office, North Capitol and H Streets, NW., Washington, DC 20401, after screening within the agency (see 44 U.S.C. 312). If the Public Printer does not express a need for the equipment within 21 days, the agency shall submit the report to GSA for further use and donation screening as described in paragraph (a) of this subsection.

(4) *Non-nuclear hazardous materials, hazardous wastes, and classified items.* These items shall be screened in accordance with agency procedures. Report non-nuclear hazardous materials to GSA if the agency has no requirement for them.

(5) *Nuclear materials.* The possession, use, and transfer of certain nuclear materials are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC). Contracting activities shall screen excess nuclear materials in the following categories:

(i) *By-product material.* Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to producing or using special nuclear material.

(ii) *Source material.* Uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(iii) *Special nuclear material.* Plutonium, Uranium 233, Uranium enriched in the isotope 233 or in the isotope 235, any other material that the NRC determines to be special nuclear material (but not including source

material); or any material artificially enriched by any nuclear material.

45.602–4 Interagency property transfer costs.

Agencies whose property is transferred to other agencies shall not be reimbursed for the property in any manner unless the circumstances of FMR 102–36.285 (41 CFR 102–36.285) apply. The agency receiving the property shall pay any transportation costs that are not the contractor's responsibility and any costs to pack, crate, or otherwise prepare the property for shipment. The contract administration office shall process appropriate contract modifications. To accelerate plant clearance, the receiving agency shall promptly furnish funding data, and transfer or shipping documents to the contract administration office.

45.603 Abandonment, destruction or donation of excess personal property.

(a) Plant clearance officers may abandon, destroy, or donate to public bodies excess property that is not sensitive property and does not require demilitarization.

(b) Plant clearance officers may abandon sensitive property that does not require demilitarization, with contractor consent, provided appropriate instructions are provided with respect to the proper care, handling, and disposal of the property.

(c) The Government may donate excess personal property to eligible donees in lieu of abandonment if the Government will not bear any of the costs incident to a donation.

(d)(1) Before abandoning, destroying, or donating excess personal property, the plant clearance officer shall determine in writing that the property does not constitute a danger to public health or welfare and—

(i) The property has no residual monetary value; or

(ii) The estimated cost to sell the property, including advertising, storage, and other costs associated with making the sale, is greater than the probable sale proceeds; and

(2) A Government reviewing official shall approve all written determinations for abandonment and destruction actions.

45.604 Disposal of surplus property.

45.604–1 Disposal methods.

(a) Except as provided in paragraphs (b) and (c) of this subsection, surplus property that has completed screening in accordance with 45.602–3(a) shall be sold in accordance with 45.604–3 or abandoned, destroyed, or donated to public bodies in accordance with 45.604–2.

(b) The following property that GSA has declared surplus or not required to be screened by GSA shall be disposed of in accordance with agency procedures:

(1) Classified items.

(2) Nonnuclear hazardous materials or hazardous wastes.

(3) Property that contains precious metals or requires demilitarization.

(4) Government property physically located outside the United States or its possessions (*see* 40 U.S.C. 701–705).

(c) Nuclear materials (*see* 45.602–3(b)(5)) shall be disposed of in accordance with NRC or applicable state licenses, applicable Federal regulations, and agency regulations.

45.604–2 Abandonment, destruction, or donation of surplus property.

(a) Plant clearance officers may abandon, destroy, or donate to public bodies surplus property that is not sensitive property, and does not require demilitarization.

(b) Plant clearance officers may abandon sensitive property that does not require demilitarization, with contractor consent, provided appropriate instructions are provided with respect to the proper care, handling, and disposal of the property.

(c) The Government may donate surplus property to eligible donees in lieu of abandonment if the Government will not bear any of the costs incident to donation.

(d) Before abandoning, destroying, or donating surplus property, the plant clearance officer shall determine in writing that the property does not constitute a danger to public health or welfare and—

(1) The property has no residual monetary value; or

(2) The estimated cost to sell the property, including advertising, storage, and other costs associated with making the sale, is greater than the probable sale proceeds.

45.604–3 Sale of surplus property.

Policy for the sale of surplus property is contained in the Federal Property Management Regulations, at Part 101–45 (41 CFR part 101–45). Agencies may specify implementing procedures.

45.604–4 Proceeds from sales of surplus property.

Proceeds of any sale are to be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute or the contract or any subcontract thereunder authorizes the proceeds to be credited to the price or cost of the work (40 U.S.C. 571 and 574).

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule or scrap list and the crediting of any related proceeds. The report shall identify any lost, stolen, damaged, destroyed, or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be addressed to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

45.606 Disposal of scrap.

45.606–1 Contractor with an approved scrap procedure.

(a) The contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, then the contractor shall submit the scrap on an inventory disposal schedule.

(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures) except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

45.606–2 Contractor without an approved scrap procedure.

The contractor shall submit an inventory disposal schedule for all scrap.

45.606–3 Procedures.

(a) The plant clearance officer shall process inventory disposal schedules in accordance with 45.602–1.

(b) The plant clearance officer shall—

(1) Accept, reject, or return for correction scrap lists within 10 days following receipt;

(2) Accept scrap lists that are consistent with a contractor's approved scrap procedure, correctly identify the

contracts under which the scrap is accountable, and correctly identify the scrap's quantity and condition;

(3) Use Standard Form 1423 to verify accepted scrap lists, in accordance with agency procedures;

(4) Require a contractor to correct any discrepancies found during verification; and

(5) Provide disposition instructions to the contractor within 45 days following Government acceptance of a scrap list. If the plant clearance officer does not provide disposition instructions within that period, the contractor may dispose of scrap identified on a scrap list without further Government approval.

PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

■ 9. Amend section 49.001 by adding, in alphabetical order, the definition "Plant clearance period", and removing the definition "Termination inventory" to read as follows:

49.001 Definitions.

* * * * *

Plant clearance period, as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

* * * * *

■ 10. Amend section 49.108–3 by revising paragraph (b)(1) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) * * *

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with the procedures contained in paragraphs (i) and (j) of the clause at 52.245–2, Government Property (Fixed-Price Contracts), and paragraphs (i) and (j) of the clause at 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts); and

* * * * *

■ 11. Amend section 49.108–4 by revising paragraphs (a)(1)(ii) and (b) to read as follows:

49.108–4 Authorization for subcontract settlements without approval or ratification.

(a)(1) * * *

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of as directed by the prime contractor, except that the disposition of the inventory shall not be subject to—

(A) Review by the TCO under 49.108–3(c); or

(B) The screening requirements in 45.602–3; and

* * * * *

(b) Section 45.602 shall apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108–3 and without screening under 45.602–3, if the items do not require demilitarization and the total amount (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this subsection.

* * * * *

■ 12. Revise the section heading and text of 49.206–3 to read as follows:

49.206–3 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever termination inventory is involved, the contractor shall submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the terminated portion of the contract. The inventory disposal schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on Standard Form 1428, Inventory Disposal Schedule.

■ 13. Revise the section heading and text of 49.303–2 to read as follows:

49.303–2 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever termination inventory is involved, the contractor shall submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the terminated portion of the contract. The inventory disposal schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory disposal schedules shall be prepared on Standard Form 1428, Inventory Disposal Schedule.

■ 14. Revise the section heading and text of 49.602–2 to read as follows:

49.602–2 Inventory forms.

Standard Form (SF) 1428, Inventory Disposal Schedule, and SF 1429, Inventory Disposal Schedule—Continuation Sheet, shall be used to support settlement proposals submitted on the forms specified in 49.602–1(b) and (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.245–2 by revising the date of the clause and paragraphs (i) and (j) to read as follows:

52.245–2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (May 2004)

* * * * *

(i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap (to which the Government has obtained title under paragraph (c) of this clause).*—(i) *Contractor with an approved scrap procedure.*—(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(*1*) Requires demilitarization;

(*2*) Is a classified item;

(*3*) Is generated from classified items;

(*4*) Contains hazardous materials or hazardous wastes;

(*5*) Contains precious metals; or

(*6*) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

(i) May purchase the property at the acquisition cost.

(ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a

supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.*—(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(7) *Storage.*—(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) *Disposition instructions.*—(i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Government property to the price or cost of work covered by this contract or to the Government as the Contracting Officer directs.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) *Abandonment of Government property.*—(1) The Government will not abandon sensitive Government property without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

* * * * *

■ 16. Amend section 52.245–5 by revising the date of the clause and paragraphs (i) and (j) to read as follows:

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (May 2004)

* * * * *

(i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap.* (i) *Contractor with an approved scrap procedure.* (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing, the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(*1*) Requires demilitarization;

(*2*) Is a classified item;

(*3*) Is generated from classified items;

(*4*) Contains hazardous materials or hazardous wastes;

(*5*) Contains precious metals; or

(*6*) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

(i) May purchase the property at the acquisition cost.

(ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.* (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment that does not contain commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(7) *Storage.* (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule, might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) *Disposition instructions.* (i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Government property to the cost of work covered by this contract, or to the Government as directed by the Contracting Officer.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) *Abandonment of Government property.* (1) The Government will not abandon sensitive Government property without the Contractor's written consent;

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

* * * * *

■ 17. Amend section 52.245–17 by revising the date of the clause and paragraph (i)(2)(ii) to read as follows:

52.245–17 Special tooling.

* * * * *

Special Tooling (May 2004)

* * * * *

(i) *Lists of special tooling.*

* * * * *

(2) * * *

(ii) *Termination inventory.* The Contractor shall submit these items on an SF 1428 or by computer list attached to an SF 1428 in accordance with FAR 45.602–1. Format and content of this submission will be as prescribed by paragraph (i)(3) of this clause, but will contain information as prescribed by FAR Subpart 45.6, in effect on the date of award of this contract.

* * * * *

52.249–2, 52.249–3, 52.249–6, 52.249–11 [Amended]

■ 18. Revise the date of the clauses to read "(May 2004)" and remove "45.6" and add "49.001" in the following sections:

■ a. Section 52.249–2(d).

■ b. Section 52.249–3(d).

■ c. Section 52.249–6(e).

■ d. Section 52.249–11(d).

PART 53—FORMS

■ 19. Revise section 53.245 to read as follows:

53.245 Government property.

The following forms are prescribed, as specified in this section, for use in reporting, reutilization, and disposal of Government property and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120–A (GSA), Continuation Sheet (Report of Excess Personal Property).* See 45.602–3 and 41 CFR 102–36.215.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126–A (GSA), Report of Personal Property for Sale (Continuation Sheet).* See FPMR 101–45.303 (41 CFR 101–45.303.))

(c) *SF 1423 (Rev. 5/04), Inventory Verification Survey.* See 45.602–1(b)(1) and 45.606–3.)

(d) *SF 1424 (Rev. 5/04), Inventory Disposal Report* (See 45.605). SF 1424 is authorized for local reproduction.

(e) *SF 1428 (Rev. 5/04), Inventory Disposal Schedule, and SF 1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet.* (See 45.602–1, 49.303–2, 52.245–2(i), 52.245–5(i), and 53.249(b).) SF's 1428 and 1429 are authorized for local reproduction.

■ 20. Amend section 53.249 by revising paragraphs (a)(3), (a)(5), and (b) to read as follows:

53.249 Termination of contracts.

(a) * * *

(3) *SF 1436 (Rev. 5/04), Settlement Proposal (Total Cost Basis).* (See 49.602–1(b).) Standard Form 1436 is authorized for local reproduction.

* * * * *

(5) *SF 1438 (Rev. 5/04), Settlement Proposal (Short Form).* (See 49.602–1(d).) Standard Form 1438 is authorized for local reproduction.

* * * * *

(b) *SF 1428 (Rev. 5/04), Inventory Disposal Schedule, and Standard Form 1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet,* shall be used to support termination settlement proposals listed in paragraph (a) of this section, as specified in 49.602–2.

BILLING CODE 6820–EP–P

■ 21. Revise section 53.301–1423 to read as follows:

53.301–1423 Inventory Verification Survey.

INVENTORY VERIFICATION SURVEY
(See FAR 45.602-1(b)(1))

DATE

SECTION I - GENERAL

1. FROM: *(Include ZIP Code)*

2. TO: *(Include ZIP Code)*

3. CONTRACT NUMBER AND TYPE

4. CONTRACTOR/SUBCONTRACTOR

5A. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

REFERENCE NUMBER	PAGES		AMOUNT ($)
	START NO.	END NO.	

5B. PLANT CLEARANCE CASE NUMBER/DOCUMENT NUMBER

SECTION II - TECHNICAL VERIFICATION

	YES	NO
6. IS PROPERTY LISTED ON THE INVENTORY DISPOSAL SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		*
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY DISPOSAL SCHEDULES?		*
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		*
9. IS THE PROPERTY PROPERLY TAGGED?		*
10. ARE THE CONDITION CODES ACCURATE?		*
11. IS THE PROPERTY CLASSIFICATION CORRECTLY IDENTIFIED?		*
12. ARE THE WEIGHTS OF THE ITEMS APPROXIMATELY CORRECT? IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT: _____		*
13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?	*	*
14. DID CONTRACTOR MAKE REASONABLE EFFORTS TO RETURN THE PROPERTY?		*
15. DO ANY ITEMS REQUIRE DEMILITARIZATION OR SPECIAL PROCESSING *(sensitive items)*?	*	
16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY DISPOSAL SCHEDULE?	*	

SECTION III - TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requester, check one)*

	YES	NO
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE OF NOTICE: _____		*
18a. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMIINATED PORTION OF THE CONTRACT?	*	
b. CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?	*	
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		*
20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.	*	
21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		*
b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?		*
c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		*
22. FOR WORK-IN-PROCESS, IS THE PERCENTAGE OF COMPLETION ACCURATE?		*

23. REQUESTING OFFICE REMARKS *(Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)*

24. SIGNATURE OF REQUESTER

INVENTORY VERIFICATION

The above information is based on a physical verification of inventory listed under Item 5.

25. NAME AND TITLE	26. SIGNATURE OF VERIFIER	27. DATE

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Previous edition not usable

STANDARD FORM 1423 (REV. 5/2004)
Prescribed by GSA-FAR (48 CFR) 53.245(c)

■ 22. Revise section 53.301–1424 to read as follows:

53.301–1424 Inventory Disposal Report.

INVENTORY DISPOSAL REPORT (See FAR 45.605)			PLANT CLEARANCE CASE NUMBER
TO: *(Include ZIP Code)*		FROM: *(Include ZIP Code)*	
1. DATE PLANT CLEARANCE CASE OPENED	2. DATE PLANT CLEARANCE CASE CLOSED	3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING	
4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR *(Include ZIP Code)*		5. IF SUBCONTRACTOR, STATE NAME AND ADDRESS OF PRIME CONTRACTOR *(Include ZIP Code)*	
6. LOCATION OF PROPERTY *(City and State)*	7. CONTRACT NUMBER	8. DOCKET NUMBER *(Termination only)*	
	9. SUBCONTRACT NUMBER	10. CONTRACTOR REFERENCE NUMBER	

DISPOSITION OF PROPERTY

ITEM DESCRIPTION	LINE ITEMS	ACQUISITION COST	PROCEEDS
11. **TOTAL INVENTORY AS SUBMITTED**			
12. ADJUSTMENTS *(Pricing errors, shortages, etc.)*			
13. ADJUSTED INVENTORY *(Line 11 + or - Line 12)*			
14. PURCHASE OR RETENTION AT COST			
15. RETURN TO SUPPLIERS *(Net Proceeds)*			
16. REDISTRIBUTIONS			
A. WITHIN OWNING AGENCY			
B. OTHER AGENCIES			
TOTAL			
17. DONATIONS			
18. SALES			
19. SALES - SCRAP PROCEEDS TO OVERHEAD			
20.			
21.			
22. **TOTAL PROCEEDS CREDIT** *(Total Lines 14, 15, and 18)*			
23. ABANDONED			
24. DESTROYED/ABANDONED			
25. DESTROYED/SCRAPPED			
26. OTHER *(Explain in Item 28, Remarks)*			
27. **TOTAL DISPOSITIONS**			

28. REMARKS *(Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)*

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE *(Authorized signature and title)*	DATE

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STANDARD FORM 1424 (REV. 5/2004)
Prescribed by GSA - FAR (48 CFR) 53.245(d)

53.301–1426 [Removed]

■ 23. Remove section 53.301–1426, Inventory Schedule A (Metals in Mill Product Form).

■ 24. Revise section 53.301–1428 to read as follows:

53.301–1428 Inventory Disposal Schedule.

INVENTORY DISPOSAL SCHEDULE (See Reverse for Instructions) (See FAR 52.245-2(i)(3) and 52.245-5(i)(3))	1. TYPE (Check block(s) when applicable) ☐ TERMINATION INVENTORY ☐ FINAL SCHEDULE	2. SCHEDULE REFERENCE NUMBER	PAGE NO.	NO. OF PAGES	OMB No.: 9000-0075 Expires: 10/31/2006

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publciations Division, GSA, Washington, DC 20405.

3. PRIME CONTRACT NO.	4. SUBCONTRACTOR/P.O. NO.	5. CONTRACT TYPE	6. TERM DOCKET NUMBER	7. TOTAL LINE ITEMS	8. TOTAL ACQUISITION COST

9a. CAGE CODE	9b. PRIME CONTRACTOR *(Point of Contact)*	10a. CAGE CODE	10b. SUBCONTRACTOR *(Point of Contact)*
9c. STREET ADDRESS		10c. STREET ADDRESS	
9d. CITY, STATE, AND ZIP CODE		10d. CITY, STATE, AND ZIP CODE	

11a. LOCATION OF PROPERTY	11b. POINT OF CONTACT FOR PROPERTY	12. PRODUCT COVERED BY CONTRACT/ORDER

13. ITEM NO.	14. ITEM DESCRIPTION	15. GOVT. FURNISHED/ CONTRACTOR ACQUIRED	16. DML CODE	17. PROPERTY CLASSIFICATION	18. GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	19. CONDITION CODE	20. QUANTITY	21. UNIT OF MEASURE	22. COST UNIT (a)	22. COST TOTAL (b)	23. CONTRACTOR'S OFFER

24a. SIGNATURE OF CONTRACTOR SUBMITTING SCHEDULE	24b. NAME OF CONTRACTOR SUBMITTING SCHEDULE	24c. TITLE	24d. DATE

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STANDARD FORM 1428 (REV. 5/2004)
Prescribed by GSA-FAR (48 CFR) 53.245(e) and 53.249(e)

INSTRUCTIONS

The Contractor shall submit all schedules to the Plant Clearance Officer.

Manual submissions. Prepare a separate schedule for items in each property classification (block 17) and a separate schedule for scrap. Submit an original and 2 copies of each scrap schedule and continuation sheet (SF 1429). For other schedules, an original and 7 copies are required.

Electronic submissions. Group all items of the same property classification. Submit separate schedules for scrap.

General Instructions.

BLOCKS 1, 2 & 4 - Self-explanatory.

BLOCK 3 - PRIME CONTRACT NO. ***(For contract modifications and BOAs).*** If the property applies solely to one contract modification indicate the modification number after the contract number. For task orders and orders under basic ordering agreements, enter the contract number or BOA number followed by the order number under which the property is accountable.

BLOCK 5 - CONTRACT TYPE. Use one of the following codes:

J - Fixed-Price
O - Other
S - Cost-Reimbursement
Y - Time-and-Material
Z - Labor-Hour
9 - Task Order Contracts and Orders under Basic Ordering Agreements (BOAs)

BLOCKS 6-8 - Self-explanatory.

BLOCKS 9a and 10a - CAGE CODE. Enter the Commercial and Government Entity code when applicable.

BLOCKS 9b-d, 10b-d, and 11a-13 - Self-explanatory.

BLOCK 14 - ITEM DESCRIPTION. Describe each item in sufficient detail to permit the Government to determine its appropriate disposition. Scrap may be described as a lot including metal content, estimated weight and estimated acquisition cost. For all other property, provide the information required by FAR Part 45.505. List the national stock number (NSN) first. For the following, also provide:

Special tooling and special test equipment. Identify each part number with which the item is used.
Computers, components thereof, peripheral and related equipment. The manufacturer's name, model and serial number, and date manufactured.
Work in process. The estimated percentage of completion.
Precious metals. The metal type and estimated weight.
Hazardous material or property contaminated with hazardous material. The type of hazardous material.
Metals in mill product form. The form, shape, treatments, hardness, temper, specification (commercial or Government), and dimensions (thickness, width, and length).

BLOCK 15 - GOVERNMENT FURNISHED/CONTRACTOR ACQUIRED. Per line item, enter one of the following:

GF - Government furnished
CA - Contractor acquired

BLOCK 16 - DML CODE. ***(Demilitarization code).*** If applicable, enter the code specified in DoD 4160.21-M-1.

BLOCK 17 - PROPERTY CLASSIFICATION. Use one of the following classifications for each line item:

EQ - Equipment
M - Material
STE - Special test equipment
ST - Special tooling
APP - Agency peculiar property

In addition, when applicable, list one of the following sub classifications for each line item below the property classification:

COM - Computers, peripherals, etc.
AAE - Arms, ammunition and explosives
PM - Precious metals
HAZ - Hazardous materials
ME - Metals in mill product form
WIP - Work in process
CL - Classified

BLOCK 18 - Self-explanatory.

BLOCK 19 - CONDITION CODE. Assign one of the following codes to each item:

Code 1. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.

Code 4. Property which shows some wear, but can be used without significant repair.

Code 7. Property which is unusable in its current condition but can be economically repaired.

Code X. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.

Code S. Property has no value except for its basic material content.

BLOCKS 20-22 - Self-explanatory.

BLOCK 23 - CONTRACTOR'S OFFER. The Contractor's offer to purchase the item if it survives screening.

■ 25. Revise section 53.301–1429 to read as follows:

53.301–1429 Inventory Disposal Schedule—Continuation Sheet.

INVENTORY DISPOSAL SCHEDULE - CONTINUATION SHEET	2. SCHEDULE REFERENCE NUMBER	PAGE NO.	NO. OF PAGES	OMB No.:9000-0075 Expires: 10/31/2006

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publciations Division, GSA, Washington, DC 20405.

13. ITEM NO.	14. ITEM DESCRIPTION	15. GOVT. FURNISHED/ CONTRACTOR ACQUIRED	16. DML CODE	17. PROPERTY CLASSIFI-CATION	18. GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	19. CONDITION CODE	20. QUAN-TITY	21. UNIT OF MEASURE	22. COST		23. CONTRACTOR'S OFFER
									UNIT (a)	TOTAL (b)	

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STANDARD FORM 1429 (REV. 5/2004)
Prescribed by GSA-FAR (48 CFR) 53.245(e) and 53.249(b)

53.301–1430 and 53.301–1431 [Removed]

■ 26. Remove sections 53.301–1430, Inventory Schedule C (Work-in-Process), and 53.301–1431, Inventory Schedule C—Continuation Sheet (Work-in-Process).

53.301–1432 and 53.301–1433 [Removed]

■ 27. Remove sections 53.301–1432, Inventory Schedule D (Special Tooling and Special Test Equipment), and 53.301–1433, Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

53.301–1434 [Removed]

■ 28. Remove section 53.301–1434, Termination Inventory Schedule E.

■ 29. Revise section 53.301–1436 to read as follows:

53.301–1436 Settlement Proposal (Total Cost Basis).

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: 9000-0012
Expires: 06/30/2004

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME

ADDRESS *(Include ZIP Code)*

If moneys payable under the contract have been assigned, give the following:
NAME OF ASSIGNEE

ADDRESS *(Include ZIP Code)*

COMPANY

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO. | CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO. | CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain below)*

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	UNFINISHED OR NOT COMMENCED: SUBSEQUENTLY COMPLETED AND INVOICED* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed) TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE *(from Schedule A)*				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT *(SF 1428)*				
5	OTHER COSTS *(from Schedule B)*				
6	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
7	**TOTAL COSTS *(Items 1 thru 6)***				
8	PROFIT *(Explain in Schedule D)*				
9	**TOTAL *(Items 7 and 8)***				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*				
11	**TOTAL *(Item 9 less Item 10)***				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	**TOTAL *(Items 11 and 12)***				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	GROSS PROPOSED SETTLEMENT *(Items 13 thru 14)*				
16	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
17	NET PROPOSED SETTLEMENT *(Item 15 less 16)*				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
19	**NET PAYMENT REQUESTED *(Item 17 less 18)***				

*Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c), and (e), Section I.

NOTE: File inventory schedule (SF 1428) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

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STANDARD FORM 1436 (REV. 5/2004)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(3)

SCHEDULE A - INDIRECT FACTORY EXPENSE *(Item 3)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS *(Item 5)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES *(Item 6)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT *(Item 8)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS *(Item 16)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*			
DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

■ 30. Revise section 53.301–1438 to read as follows:

53.301–1438 Settlement Proposal (Short Form).

SETTLEMENT PROPOSAL (SHORT FORM)

OMB No.: 9000-0012
Expires: 06/30/2004

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

For Use by a Prime Contractor or Subcontractor in Settlement of a Fixed Price Terminated Contract When Total Charges Claimed Are Less Than $10,000.

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

If moneys payable under the contract have been assigned, give the following:

NAME OF ASSIGNEE

ADDRESS *(Include ZIP Code)*

COMPANY *(Prime or Subcontractor)*

STREET ADDRESS

CITY AND STATE *(Include ZIP code)*

NAME OF GOVERNMENT AGENCY	GOVERNMENT PRIME CONTRACT NO.
CONTRACTOR'S REFERENCE NO.	EFFECTIVE DATE OF TERMINATION

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED *(Partial termination only)* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM *(Include only items allocable to the terminated portion of contract)*	AMOUNT OF CHARGE ($)
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING *(from SF 1428)*	
2	CHARGE FOR WORK-IN-PROGRESS, RAW MATERIAL, ETC. ON HAND *(from SF 1428)*	
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	
5	GROSS PROPOSED SETTLEMENT *(Sum of Items 1 thru 4)*	
6	DISPOSAL AND OTHER CREDITS *(from SF 1424, Item 27, Col. 3)*	
7	NET PROPOSED SETTLEMENT *(Item 5 less 6)*	
8	ADVANCE, PROGRESS, AND PARTIAL PAYMENTS	
9	NET PAYMENT REQUESTED *(Item 7 less 8)*	

List your inventory on SF 1428 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6, AND 7

I CERTIFY that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order, that the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposal(s) against agencies of the United States.

NAME OF YOUR COMPANY

BY *(Signature of authorized official)*

TITLE | DATE

(Where the space provided for any information is insufficient, continue on a separate sheet.)

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STANDARD FORM 1438 (REV. 5/2004)
Prescribed by GSA-FAR (48 CFR) 53.249(a)(5)

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below $10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under Items 2, 3, and 4, the following:

a. COSTS - Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commerical accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

b. SETTLEMENT WITH SUBCONTRACTORS - Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.

c. SETTLEMENT EXPENSES - Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.

d. PROFIT - A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than $10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor, your customer must be satisfied with your proposal.

STANDARD FORM 1438 (REV. 5/2004) **BACK**

[FR Doc. 04–7405 Filed 4–2–04; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAC 2001–22; FAR Case 2001–034; Item II]

RIN 9000–AJ60

Federal Acquisition Regulation; General Provisions of the Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise certain general provisions of the cost principles pertaining to Composition of total cost; Determining allowability; Direct costs; and Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The revisions are intended to revise Contract Cost Principles and Procedures in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation of FAR Contract Cost Principles and Procedures. The final rule also adds the definition of "direct cost" and revises the definition of "indirect cost" to be consistent with the terminology used in the cost accounting standards (CAS).

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–22, FAR case 2001–034.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5774, February 4, 2003, with request for comments. Four respondents submitted comments; a discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in paragraphs 4, 5, 6, 7, and 8 below.

Public Comments

FAR 2.101—Definition of "Indirect Cost"—Reference to CAS

1. *Comment:* A respondent recommends that if the FAR is going to include CAS definitions, these definitions should be referenced rather than restated to eliminate redundancy and any inadvertent differences of interpretation when CAS is not directly quoted.

Councils' Response: Nonconcur. The Councils believe it is better to include the definitions in the FAR rather than include a reference to another regulation to which a user may not have easy access. This is particularly important in this instance, since the term "indirect cost" is used in various parts of the FAR.

FAR 31 Cost Principles—Incorporating CAS Provisions

2. *Comment:* A respondent recommends that FAR 31 make CAS standards applicable to FAR contracts, and then exclude certain standards and/or certain classes of contracts from FAR Part 31 application.

Councils' Response: Nonconcur. The Councils believe it is not desirable to incorporate all of the CAS standards and then exclude certain ones. The Councils believe the current approach in FAR Part 31 that adopts certain standards in specific sections of the FAR provides easier application than the suggested revision.

3. *Comment:* A respondent asserts that the proposed rule incorporates substantial CAS provisions into the FAR cost principles. The respondent states that, by law, the CAS Board governs the measurement, assignment, and allocation of cost to cost objectives, and that FAR cost principles should be limited to matters of allowability. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' Response: Nonconcur. The Councils considered this proposal but believe that eliminating all CAS from FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS Board has chosen to use for CAS-covered contracts. Furthermore, the Councils have chosen to use some of the same definitions and concepts as used in CAS, including the definitions of direct and indirect costs. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed, and found that the proposed rule does not paraphrase any CAS requirements.

FAR 31.106–2 and 31.203—Special Allocations

4. *Comment:* A respondent recommends that the special allocation language include an illustration similar to those that are included in the CAS. The respondent notes that CAS 410.60(g) makes a point that contract costs that are outside the contractor's normal productive activity should be excluded from the G&A base. The respondent also recommends that the language at 31.106–2(b)(3) be revised to read "Exclude the related allocation base data for the facilities contract from the base used to allocate the pool."

Three other respondents recommend that FAR 31.106–2 be eliminated in its entirety. One respondent asserts that this topic is adequately addressed in CAS. If this suggestion is not adopted, the three respondents recommend that the proposed language not be promulgated and the existing language remain unchanged. Two respondents assert that the proposed rule adds language prescribing the use of certain accounting methods for special allocations for "facilities contracts" that will lead to disagreements as to accounting decisions. This includes requiring the contracting officer to enter into an advance agreement. To correct this, they recommend replacing "shall" with "may" at 31.106–2(b).

Three respondents contend that the proposed rule "flips" the responsibility of accounting decisions from the contractor to the contracting officer by stating "The Cognizant Federal Agency

is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement." Two respondents assert that this language takes the accounting decisions out of the hands of contractors, which is clearly against public policy. One respondent further asserts that it is the contractor's responsibility to determine if the conditions necessitating a special allocation exist. Another respondent asks what is the remedy if a contractor does not agree to a special allocation. One respondent recommends that the language be removed and replaced with "Negotiate an advance agreement with the cognizant Federal agency in accordance with 31.109 criteria".

Two respondents note that the proposed language at 31.106–2(d) and (e) provides examples that are not all inclusive and could be misleading. One respondent believes that this will give rise to disputes because of differences in interpretation between the CAS and the FAR. The other respondent believes the conceptual framework for this language is already covered by 31.109 and thus it is not needed in this paragraph.

Councils' Response: Concur in part. After reviewing the public comments and the background underlying this revision, the Councils believe it is preferable to not include the concept of special allocations in FAR Part 31. The Councils believe the current language is adequate and necessary to address this issue, since that language provides the contracting parties with the necessary flexibility to address those unique circumstances when a particular contract requires special treatment. As a result, the Councils agreed that the proposed rule for FAR 31.106–2 not be published (the only proposed change to this provision was for the special allocation). The Councils also agreed to delete the proposed language on special allocations at FAR 31.203(f), and retain the current language at FAR 31.203(f) (renumbered as paragraph (h)).

FAR 31.201–1(a)—Standard Cost

5. *Comment:* Two respondents assert that the language at 31.201–1(a) on "standard cost" is duplicated at the beginning and end of this paragraph. They further assert that standard costs are fully defined and dealt with in CAS 407, Use of Standard Costs for Direct Material and Direct Labor, and there is no need to paraphrase CAS language or to eliminate the reference to the CAS requirements.

Councils' Response: Concur in part. The Councils agree that the phrase "including standard costs properly adjusted for applicable variances" is repeated at the beginning and end of the paragraph at FAR 31.201–1(a), and, therefore, they agreed to delete it from the end of the paragraph. However, the Councils do not believe the paragraph should completely delete the reference to standard costs. The reference is intended to assure that standard costs are included as part of the composition of total costs, provided they are properly adjusted to reflect applicable variances. Without this language, the cost principles could be misinterpreted as excluding standard costs from the determination of total cost.

FAR 31.201–2(a)—Determining Allowability

6. *Comment:* Three respondents state that the proposed language constitutes a major change in determining allowability because it revises the language on determining allowability from "factors to be considered" to "A cost is allowable only when all of the following requirements are met." Two respondents recommend that this language be deleted.

Two respondents assert that the proposed language is overly prescriptive, limits contracting officer discretion, and violates the guiding principles at FAR 1.102. One respondent asserts that such language does not "encourage innovation, and local adaptation where uniformity is not essential," nor does it provide "the authority to the maximum extent practicable and consistent with the law, to determine the application of rules, regulations, and policies on a specific contract." The respondent also believes this language is contrary to FAR 1.102–4(e), which states "If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statutes or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with the law and within the limits of their authority. Contracting Officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound."

One respondent asserts that the proposed language would allow Government auditors to disregard CAS allocability requirements in seeking to prove that the Government was charged costs that were deemed unallocable on Government contracts. If this language is retained, the respondent recommends that the allocability requirements in subparagraphs (2) and (3) be deleted. The respondent also notes that all five criteria are not necessarily present in all cases (such as when there are no specific reimbursement requirements in the terms of the contract) and thus the language is not appropriate.

Councils' Response: Nonconcur. The Councils believe the proposed language is consistent with established case law, *i.e.*, a cost must meet all five factors to be allowable. In Celesco Industries (ASBCA Case Number 22402, 80–1 BCA, 14721, dated 1/31/80), the court stated:

> "Of course, appellant's methods of allocation of indirect costs are *required*, pursuant to DAR 15–201.2, to be in accord with the generally accepted accounting principles." (Emphasis added.)

In this case, the ASBCA clearly stated that application of Generally Accepted Accounting Principles is required under the cost principle (DAR 15–201.2 is the predecessor to the current 31.201–2 and included the same language).

The argument that these are just "considerations" also fails when viewed in light of the "factors" listed at FAR 31.201–2. Included in this list are the Cost Accounting Standards (CAS) and the terms of the contract. These are not items that can simply be "considered" but not necessarily followed. The CAS, when applicable to a particular contract, is a statutory requirement that cannot be disregarded at the discretion of the contracting parties. In addition, the terms of the contract cannot just be considered; they must be adhered to. Furthermore, certain parts of FAR 31 implement statutory provisions that preclude reimbursement of certain costs, and as such, cannot be subjectively applied.

It is also evident that the promulgators have, for many years, intended for these items to be requirements rather than just considerations. In particular, DFARS 2.402 states that the Director for Defense Procurement and Acquisition Policy is the approval authority for any individual or class deviation to FAR subpart 31.2. If the intention of 31.201–2 was to only consider the factors listed, the provision at DFARS 2.402 would not be necessary. The contracting officer would consider these factors (which includes the requirements of FAR subpart 31.2), and apply them at his/her discretion. Such an application would circumvent the requirement at DFARS 2.402. The specific approval authority for deviations at DFARS 2.402 exists because these are intended to be requirements, not just considerations.

As to FAR 1.102, this provision provides direction to the contracting officer and other acquisition team members to use when the regulations do not address a particular situation. It does not direct that the regulations should not provide for specific allowability criteria.

In those rare situations where a particular cost does not meet the requirements of the five factors but is the type that the contracting activity wants to allow, a deviation should be requested in accordance with the FAR requirements.

As for the argument that the five requirements may not always be present and therefore this provision is not appropriate, the Councils disagree. However, the Councils review of this comment disclosed that the proposed wording might have lead to some confusion. As a result, the proposed language at 31.201–2(a) has been revised.

FAR 31.203—Indirect Costs

7. *Comment:* A respondent asserts that the proposed language includes direct quotes from CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose, and other CAS language that should be eliminated in the spirit of DFARS transformation. The respondent states that a simple word count shows the word "allocate" in various forms twenty times. The respondent also states that cost allocation is the responsibility of the CAS Board, and sees no valid reason to replicate CAS in FAR.

Councils' Response: Concur in part. The proposed language is intended to apply to contractors that are not subject to the CAS allocation standards, *i.e.*, full CAS coverage. For contracts not subject to full CAS-coverage, the Councils believe that some basic requirements are needed for determining the allocation of indirect costs to Government cost-based contracts; the absence of such requirements would result in significant disagreements and potential misallocations of costs to cost-based Government contracts. Accordingly, to provide clarity, the Councils added paragraph (a) to FAR 31.203.

FAR 31.203(b)—Final Cost Objectives

8. *Comment:* A respondent recommends that FAR 31.203(a) (renumbered as paragraph (b)) be revised to add the words "two or more" before "final cost objectives."

Councils' Response: Concur. The Councils believe the revision will provide for increased consistency with the definition of indirect costs at 2.101.

FAR 31.203(d)—Revising FAR To Reflect Court Decisions

9. *Comment:* A respondent asserts that while the FAR revises the language at 31.203(c) (renumbered as paragraph (d)) to reflect the outcome in a recent court case where the Government position was sustained, there is no FAR revision to reflect the outcome of another court case on changes in cost accounting practice where the Government position was not sustained. The respondent believes the Councils should treat both situations alike and not attempt to sway contracting officers in one direction or another by selectively adding the outcome of certain court cases.

Councils' Response: Nonconcur. The language at 31.203(d) is not being modified to reflect the outcome of any court case. This paragraph revises the term "distributing" to "allocating," to be consistent with the terminology used throughout FAR Part 31. The Councils also note that the respondent's referenced case on changes in cost accounting practice does not address any FAR requirements, *i.e.*, the provisions at issue were solely in the CAS.

FAR 31.203(g)—Base Period for Allocating Indirect Costs

10. *Comment:* A respondent recommends that CAS 406, Cost Accounting Period, be used in lieu of FAR 31.203(g). If FAR 31.203(g) is not replaced by CAS 406, the respondent recommends that the language at FAR 31.203(g) replace the term "base period" with "cost accounting periods", to be consistent with the language in CAS 406.

Councils' Response: Nonconcur. The Councils believe that the detailed requirements in CAS 406 are not necessary for non-CAS covered contracts. As for the "base period," paragraph (g) defines the base period as "the cost accounting period during which * * *" Since the definition of a base period includes the cost accounting period, the Councils do not believe it is necessary to change the term "base period" to "cost accounting period."

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Direct cost" and by revising the definition "Indirect cost" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

* * * * *

Direct cost means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

* * * * *

Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.109 [Amended]

■ 3. Amend section 31.109(h)(13) by removing "31.203(f)" and adding "31.203(h)" in its place.

31.201–1 [Amended]

■ 4. Revise section 31.201–1 to read as follows:

31.201–1 Composition of total cost.

(a) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to 31.205–10, less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used.

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

■ 5. Amend section 31.201–2 by revising paragraphs (a), (c), and (d) to read as follows:

31.201–2 Determining allowability.

(a) A cost is allowable only when the cost complies with all of the following requirements:

(1) Reasonableness.

(2) Allocability.

(3) Standards promulgated by the CAS Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the circumstances.

(4) Terms of the contract.

(5) Any limitations set forth in this subpart.

* * * * *

(c) When contractor accounting practices are inconsistent with this subpart 31.2, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

■ 6. Revise section 31.202 to read as follows:

31.202 Direct costs.

(a) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Direct costs of the contract shall be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment—

(1) Is consistently applied to all final cost objectives; and

(2) Produces substantially the same results as treating the cost as a direct cost.

■ 7. Revise section 31.203 to read as follows:

31.203 Indirect costs.

(a) For contracts subject to full CAS coverage, allocation of indirect costs shall be based on the applicable provisions. For all other contracts, the applicable CAS provisions in paragraphs (b) through (h) of this section apply.

(b) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or two or more final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(c) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected shall allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(d) Once an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base shall bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor shall include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items shall bear their pro rata share of G&A costs.

(e) The method of allocating indirect costs may require revision when there is a significant change in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(f) Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor shall follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (*e.g.*, when a change in fiscal year occurs due to a business combination or other circumstances).

(h) Special care should be exercised in applying the principles of paragraphs (c), (d), and (e) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.205–42 [Amended]

■ 8. Amend section 31.205–42 in the second sentence of paragraph (h) by

removing "31.203(c)" and adding "31.203(d)" in its place.

[FR Doc. 04–7406 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–22; FAR Case 2002–025; Item III]

RIN 9000–AJ70

Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert the interim rule published at 68 FR 56679, October 1, 2003, to a final rule without change. The final rule requires that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS).

DATES: *Effective Date:* April 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–22, FAR case 2002–025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule implementing this requirement in the **Federal Register** at 68 FR 56679, October 1, 2003. The interim rule required agencies to be in compliance by October 1, 2003. The 30-day public comment period for the interim rule ended October 31, 2003. No comments were received in response to the interim rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 4, which was published in the **Federal Register** at 68 FR 56679, October 1, 2003, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 04–7407 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2001–22; FAR Case 2002–027; Item IV]

RIN 9000–AJ66

Federal Acquisition Regulation; Unsolicited Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 834 of the Homeland Security Act of 2002 (Public Law 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 2001–22, FAR case 2002–027.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost-related or price-related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

DOD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 33330, June 3, 2003. A comment was received from one respondent. The Councils considered the comment before agreeing to publish the proposed rule as final. A summary of the comment and the disposition follows:

Comment: The proposed language in FAR 15.606–1(a)(4), Receipt and initial review, should be revised to more closely mirror the wording in Section 834 as follows: "Contains sufficient technical and cost information including cost-related or price related factors for evaluation."

Response: The Councils do not concur. Proposals do not typically include cost-related or price-related factors. Such factors are developed by agencies in competitive acquisitions prior to soliciting proposals and are used to assess the offeror's proposal and the offeror's ability to perform the prospective contract successfully. This allows all proposals to be evaluated for award based on the identical factors. Inserting a requirement for proposals to contain factors would likely create confusion between the competitive

selection process and the unsolicited proposal process. The addition of the phrase "and cost-related or price-related information" instead of "factors" more clearly addresses the requirements of statute and is consistent with established procedures for initial review of unsolicited proposals.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.603 by removing "and" from the end of paragraph (c)(4); removing the period from the end of paragraph (c)(5) and adding "; and" in its place; and adding a new paragraph (c)(6) to read as follows:

15.603 General.

* * * * *

(c) * * *

(6) Not address a previously published agency requirement.

* * * * *

■ 3. In section 15.606–1, amend paragraph (a) by—

■ a. Revising paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), respectively; and

■ c. Adding a new paragraph (a)(5). The revised and added text reads as follows:

15.606–1 Receipt and initial review.

(a) * * *

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

* * * * *

[FR Doc. 04–7408 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 2001–22; FAR Case 2003–020; Item V]

RIN 9000–AJ89

Federal Acquisition Regulation; New Mexico Tax—United States Missile Defense Agency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to incorporate the Missile Defense Agency (MDA), as a participating agency within the terms and conditions stipulated in the FAR.

DATES: *Effective Date:* April 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–22, FAR case 2003–020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 29.401–4(c), to include the Missile Defense Agency in the list of agencies that have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in the performance of services in the State of New Mexico and for which title to such property will subsequently pass to the United States upon delivery of the property to the contractor and its subcontractor by the vendor.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 29 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–22, FAR case 2003–020), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 29

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 29 as set forth below:

PART 29—TAXES

■ 1. The authority citation for 48 CFR part 29 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

29.401–4 [Amended]

■ 2. Amend section 29.401–4 in the list following paragraph (c)(1) by—
■ a. Removing "United States Defense Special Weapons Agency" and adding "United States Defense Threat Reduction Agency" in its place;
■ b. Removing "and" after "United States General Services Administration;"; and
■ c. Adding, in alphabetical order, "United States Missile Defense Agency; and".

[FR Doc. 04–7409 Filed 4–2–04; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–22; Item VI]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date:* April 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–22, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.212–5 [Amended]

2. Amend section 52.212–5 by revising the date of the clause to read "(Apr 2004)"; and in paragraph (b)(24) of the clause by removing "(Oct 2003)" and adding "(Dec 2003)" in its place.

52.213–4 [Amended]

3. Amend section 52.213–4 by revising the date of the clause to read "(Apr 2004)"; and in paragraph (a)(1)(iv) of the clause by removing "(Oct 2003)" and adding "(Dec 2003)" in its place.

[FR Doc. 04–7410 Filed 4–2–04; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–22 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–22 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–22

Item	Subject	FAR case	Analyst
I*	Government Property Disposal	1995–013	Parnell.
II	General Provisions of the Cost Principles	2001–034	Loeb.
III	Unique Contract and Order Identifier Numbers	2002–025	Zaffos.
IV	Unsolicited Proposals	2002–027	Wise.
V	New Mexico Tax—United States Missile Defense Agency	2003–020	Loeb.
VI	Technical Amendments.		

Item I—Government Property Disposal (FAR Case 1995–013)

This final rule amends FAR Parts 1, 2, 8, 45, 49, 52, and 53 to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

Item II—General Provisions of the Cost Principles (FAR Case 2001–034)

This final rule amends the FAR to revise certain general provisions of the cost principles contained at FAR 31.201–1, Composition of total cost; FAR 31.201–2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The final rule also adds the definition of "direct cost" and revises the definition of "indirect cost" at FAR 2.101, Definitions, to be consistent with the terminology used in the cost accounting standards (CAS). The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public

meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

The interim rule published in the **Federal Register** at 68 FR 56679, October 1, 2003, is converted to a final rule, without change, to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

Item IV—Unsolicited Proposals (FAR Case 2002–027)

This final rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost related or price related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

Item V—New Mexico Tax—United States Missile Defense Agency (FAR Case 2003–020)

This final rule amends FAR 29.401–4(c) to incorporate the Defense Missile Agency as a participating agency within the terms and conditions stipulated in FAR 29.401–4, New Mexico Gross Receipts and Compensating Tax. This provision aims to eliminate the double taxation of Government cost reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in the State of New Mexico and for which such property will pass to the United States.

Item VI—Technical Amendments

This amendment makes editorial changes at FAR 52.212–5(b)(24) and 52.213–4(a)(1)(iv).

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04–7411 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Monday,
April 5, 2004

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Electrical Standard; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–108C]

RIN 1218–AB95

Electrical Standard

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise the general industry electrical installation standard found in Subpart S of 29 CFR Part 1910. The Agency has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that the requirements in the revised standard, which draw heavily from the 2000 edition of the National Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee Workplaces (NFPA 70E), and the 2002 edition of the National Electrical Code (NEC), are reasonably necessary to provide protection from these hazards. This proposed rule focuses on safety in the design and installation of electric equipment in the workplace. This revision will provide the first update of the installation requirements in the general industry electrical installation standard since 1981.

OSHA is also proposing to replace the reference to the 1971 National Electrical Code in the mandatory appendix to the powered platform standard with a reference to OSHA's electrical installation standard.

DATES: Submit written hearing requests and comments regarding this proposal, including comments on the information-collection determination described in Section XI. of the preamble (OMB Review under the Paperwork Reduction Act of 1995), by the following dates:

Hard Copy: Your hearing requests and comments must be submitted (postmarked or sent) by June 4, 2004.

Facsimile and electronic transmission: Your hearing requests and comments must be sent by June 4, 2004.

Please see the section entitled **SUPPLEMENTARY INFORMATION** for additional information on submitting written comments and hearing requests.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* Submit three copies of hearing requests, comments, and attachments to the OSHA Docket Office, Docket No. S–108C, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Please note that security-related problems may result in significant delays in receiving comments and other materials by regular mail. Telephone the OSHA Docket Office at (202) 693–2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

Facsimile: Transmit hearing requests and comments (including attachments) consisting of 10 or fewer pages by facsimile to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. S–108C, in your comments.

Electronic: Submit comments electronically through the Internet at *http://ecomments.osha.gov*.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Most comments and submissions will be posted on OSHA's Web page (*http://www.osha.gov*). Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available on the OSHA Web page and for assistance in using this Web page to locate docket submissions. Because comments sent to the docket or to OSHA's Web page are available for public inspection, the Agency cautions interested parties against including in these comments personal information such as social security numbers and birth dates.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Mr. George Shaw, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Ms. Belinda Cannon, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2083.

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SUPPLEMENTARY INFORMATION:

I. Introduction

This proposed rule would revise OSHA's existing standard for electrical installations, which is contained in §§ 1910.302 through 1910.308 of Subpart S, with relevant definitions in § 1910.399. It would apply, as the existing standard does, to employers in general industry and in maritime employment.

OSHA undertook the project to revise Subpart S for two major reasons. First, the Agency wanted the rule to reflect the most current practice and technology in the industry. The current rule is based on a national consensus standard, the 1979 edition of Part I of NFPA 70E, entitled *Standard for Electrical Safety Requirements for Employee Workplaces*. That consensus standard has been updated several times since OSHA last revised its electrical installation requirements in 1981. The proposed rule being published today relies heavily on the 2000 edition of NFPA 70E. Second, in proposing this rule, OSHA is responding to requests from stakeholders that the Agency revise Subpart S so that it conforms with the most recent editions of NFPA 70E and the National Electrical Code.[1] These stakeholders argued that interested members of the public have had substantial input into the content of NFPA 70E, and that industry is complying with that standard in its current form. The revised regulation will be more flexible and efficient for stakeholders and small businesses, while maintaining needed protections for workers.

OSHA's existing electrical standard in §§ 1910.302 through 1910.308 is based on the 1979 edition of NFPA 70E, which is a national consensus standard developed by a cross section of industry, labor, and other allied interests. Consensus standards like the National Electrical Code (NEC) and NFPA 70E provide nationally recognized safe electrical installation requirements. Additionally, the consensus process used in developing NFPA 70E, Part 1 of which is based on the NEC, ensures that requirements contained in that standard are current and at the forefront of electrical safety technology. Because the primary objective of this revision of Subpart S is to update the standard to recognize, and

[1] See, for example, letters from: Judith Gorman, Managing Director of the Institute of Electrical and Electronic Engineers; George D. Miller, President and Chief Executive Officer of the National Fire Protection Association; Frank K. Kitzantides, Vice President of Engineering at the National Electrical Manufacturers Association; and Kari P. Barrett, Director of Regulatory and Technical Affairs, Plant Operations, at the American Chemistry Council.

in some cases require, the most current electrical safety technology, OSHA believes that the 2000 edition of NFPA 70E should be the foundation of the proposal.

The remainder of the preamble discusses the background of the proposal; the history of Subpart S and the development of this proposal; the statutory considerations; a summary and explanation of the proposed standard; the Preliminary Economic and Regulatory Flexibility Analysis; the information collections associated with the rule; and other miscellaneous topics. The outline of the preamble is as follows:

II. Background

A. Hazards Associated With Electricity

Electricity is widely recognized as a serious workplace hazard, exposing employees to electric shock, burns, fires, and explosions. According to the Bureau of Labor Statistics, 289 employees were killed by contact with electric current in 2002.[2] Other employees have been killed or injured in fires and explosions caused by electricity.

It is well known that the human body will conduct electricity. If direct body contact is made with an electrically energized part while a similar contact is made simultaneously with another conductive surface that is maintained at a different electrical potential, a current will flow, entering the body at one contact point, traversing the body, and then exiting at the other contact point, usually the ground. Each year many workers suffer pain, injuries and death from such electric shocks.

Burns suffered in electrical accidents can be very serious. These burns may be of three basic types: electrical burns, arc burns, and thermal contact burns. Electrical burns are the result of the electric current flowing in the tissues, and may be either skin deep or may affect deeper layers (such as muscles and bones) or both. Tissue damage is caused by the heat generated from the current flow; if the energy delivered by the electric shock is high, the body cannot dissipate the heat and the tissue is burned. Typically, such electrical burns are slow to heal. Arc burns are the result of high temperatures produced by electric arcs or by explosions close to the body. If the current involved is great enough, these arcs can cause injury or can start a fire. Fires can also be created by overheating equipment or by conductors carrying too much current. Extremely high-energy arcs can damage equipment, causing fragmented metal to fly in all directions. In atmospheres which contain explosive gases or vapors or combustible dusts, even low-energy arcs can cause violent explosions. These burns are similar to burns and blisters produced by any high temperature source. Finally, thermal contact burns are those normally experienced from the skin contacting hot surfaces of overheated electric conductors, conduits, or other energized equipment. All types of burns may be produced simultaneously.

Current through the body, even at levels as low as 3 milliamperes, can also cause injuries of an indirect or secondary nature in which involuntary muscular reaction from the electric shock can cause bruises, bone fractures and even death resulting from collisions or falls.

B. Nature of Electrical Accidents

Electrical accidents, when initially studied, often appear to be caused by circumstances that are varied and peculiar to the particular incidents involved. However, further consideration usually reveals the underlying cause to be a combination of three possible factors: work involving unsafe equipment and installations; workplaces made unsafe by the environment; and unsafe work performance (unsafe acts). The first two factors are sometimes combined and simply referred to as unsafe conditions. Thus, electrical accidents can be generally considered as being caused by unsafe conditions, unsafe acts, or, in what is usually the case, combinations of the two. It should also be noted that inadequate maintenance can cause equipment or installations which were originally considered safe to deteriorate, resulting in an unsafe condition.

Some unsafe electric equipment and installations can be identified, for example, by the presence of faulty insulation, improper grounding, loose connections, defective parts, ground faults in equipment, unguarded live parts, and underrated equipment. The environment can also be a contributory factor to electrical accidents in a number of ways. Environments containing flammable vapors, liquids or gases; areas containing corrosive atmospheres; and wet and damp locations are some unsafe environments affecting electrical safety. Finally, unsafe acts include the failure to deenergize electric equipment when it is being repaired or inspected, the use of obviously defective and unsafe tools, or the use of tools or equipment too close to energized parts.

C. Protective Measures

There are various general ways of protecting employees from the hazards of electric shock, including insulation and guarding of live parts. Insulation provides an electrical barrier to the flow of current. To be effective, the insulation must be appropriate for the voltage, and the insulating material must be undamaged, clean, and dry. Guarding prevents the employee from coming too close to energized parts. It can be in the form of a physical barricade, or it can be provided by installing the live parts out of reach from the working surface. (This technique is known as "guarding by location.")

Grounding is another method of protecting employees from electric shock; however, it is normally a secondary protective measure. To keep guards or enclosures at a common potential with earth, they are connected, by means of a grounding conductor, to ground. In addition, grounding provides a path of low impedance and of ample capacity back to the source to pass enough current to operate the overcurrent devices in the circuit. If a live part accidentally comes in contact with a grounded enclosure, current flow is directed back to earth, and the circuit protective devices (for example, fuses and circuit breakers) can interrupt the circuit.

If it draws too much current, electric equipment can overheat, which can result in fires.[3] Protecting electric equipment from overcurrent helps prevent this from happening.

Designing and installing equipment to protect against dangerous arcing and overheating is also important in preventing unsafe conditions that can lead to fires, high energy electric arcs, and explosions. Employers and employees cannot usually detect

[2] "2002 Census of Fatal Occupational Injuries," Table A–9, Bureau of Labor Statistics, *http://www.bls.gov/iif/oshwc/cfoi/cftb0163.pdf.*

[3] Overheating can also lead to electric shock hazards if the insulation protecting a conductor melts.

improperly designed or rated equipment. Thus, OSHA relies on third-party testing and certification of electric equipment to ensure proper electrical design. This helps ensure, for example, that equipment will not overheat during normal operation and that equipment designed for use in a hazardous location will not cause a fire or explosion. It also helps ensure that equipment is appropriately rated and marked, allowing employees designing electrical installations and installing electric equipment to select equipment and size conductors in accordance with those ratings.[4] Many of the requirements in OSHA's electrical standards in turn depend on accurate ratings on equipment.

These protective measures help ensure the safe installation of electric equipment and are prescribed by the requirements presently contained in 29 CFR Part 1910, Subpart S. Addressing common unsafe conditions, these rules cover such safety considerations as guarding and insulation of live parts, grounding of equipment enclosures, and protection of circuits from overcurrent. This rulemaking would update those requirements to make them consistent with the latest edition of NFPA 70E. This revision would better protect employees by recognizing the latest techniques in electrical safety and by requiring installations to incorporate those techniques whenever necessary.

III. History of the Rule

On February 16, 1972, OSHA incorporated the 1971 edition of the National Fire Protection Association's (NFPA) *National Electrical Code* (NEC), NFPA 70–1971, by reference as its electrical standard for general industry (37 FR 3431). The Agency followed the procedures outlined in Section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), which directed the Secretary to adopt existing national consensus standards as OSHA standards within 2 years of the effective date of the Occupational Safety and Health Act (OSH Act). In incorporating the 1971 NEC by reference, OSHA made the entire 1971 NEC applicable to all covered electrical installations made after March 15, 1972. For covered installations made before that date, OSHA listed about 20 provisions from the 1971 NEC that applied. No other provisions of the 1971 NEC applied to these older installations. Thus, older installations were "grandfathered" so that they did not need to meet most of the requirements in the consensus standard.

On January 16, 1981, OSHA revised its electrical installation standard for general industry (46 FR 4034). This revision replaced the incorporation by reference of the 1971 National Electrical Code with relevant requirements from Part I of the 1979 edition of NFPA 70E.[5] The revision simplified and clarified the electrical standard and updated its provisions to match the 1978 NEC (the latest edition available at the time). The standard was written to reduce the need for frequent revision and to avoid technological obsolescence. These goals were achieved—NFPA 70E had only minor changes over its initial 15 years of existence. The first substantial changes were introduced in the 1995 edition of NFPA 70E.

The latest edition of NFPA 70E, the 2000 edition, contains a number of significant revisions, including a new, alternative method for classifying and installing equipment in Class I hazardous locations (see preamble Section V. F. "Zone Classification," below). NFPA has recommended that OSHA revise its general industry electrical standards to reflect the latest edition of NFPA 70E, arguing that such a revision would provide a needed update to the OSHA standards and would better protect employees. The present proposal responds to NFPA's recommendations with regard to installation safety. It also reflects the Agency's commitment to update its electrical standards, keep them consistent with NFPA standards, and ensure that they appropriately protect employees. The Agency intends to extend this commitment by using NFPA 70E as the basis for future revisions to its electrical safety-related work practice requirements and new requirements for electrical maintenance and special equipment.

IV. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq.*, is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b) and 654(b).

A safety or health standard "requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if:

- A significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk;
- It is technologically and economically feasible;
- It is cost effective;
- It is consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action;
- It is supported by substantial evidence; and
- In the event the standard is preceded by a consensus standard, it is better able to effectuate the purposes of the OSH Act than the standard it supersedes.

International Union, UAW v. *OSHA (LOTO II)*, 37 F.3d 655 (D.C. Cir. 1994).

OSHA has generally considered an excess risk of 1 death per 1000 employees over a 45-year working lifetime as clearly representing a significant risk. *Industrial Union Dept.* v. *American Petroleum Institute (Benzene)*, 448 U.S. 607, 646 (1980); *International Union* v. *Pendergrass (Formaldehyde)*, 878 F.2d 389, 393 (D.C. Cir. 1989); *Building and Construction Trades Dept., AFL–CIO* v. *Brock (Asbestos)*, 838 F.2d 1258, 1264–65 (D.C. Cir. 1988).

A standard is considered technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA (Cotton Dust)*, 452 U.S. 490, 513 (1981), *American Iron and Steel Institute* v. *OSHA (Lead II)*, 939 F.2d 975, 980 (D.C. Cir. 1991).

[4] Electric equipment is typically rated for use with certain voltages and current. For example, an electric hair dryer might be rated at 125 volts, 1875 watts. The voltage rating indicates the maximum voltage for which the equipment is rated. The wattage rating indicates how much power the equipment will draw when connected to a circuit at the maximum voltage. The current drawn by the equipment is the wattage rating divided by the voltage rating. Thus, the circuit voltage (120 volts, nominal) is less than the maximum rated voltage of the hair dryer (125 volts), and the circuit is rated for the current the equipment will draw (1875 watts/125 volts = 15 amperes). Thus, the hair dryer would be suitable for use on a 120-volt circuit capable of safely carrying 15 amperes.

[5] OSHA added electrical safety-related work practice requirements to Subpart S on August 6, 1990 (55 FR 31984). Those requirements were based on Part II of 1988 edition of NFPA 70E. However, the current rulemaking makes no changes to the safety-related work practice provisions in Subpart S.

OSHA generally considers a standard to be cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *Cotton Dust,* 453 U.S. at 514, n.32; *International Union, UAW* v. *OSHA (LOTO III),* 37 F.3d 655, 668 (D.C. Cir. 1994).

All OSHA standards must be highly protective, and, where practical, "expressed in terms of objective criteria and of the performance desired." *LOTO III,* 37 F.3d at 669. Finally, the OSH Act requires that when promulgating a rule that differs substantially from a national consensus standard, OSHA must explain why the promulgated rule is a better method for effectuating the purpose of the Act. 29 U.S.C. 655(b)(8). As discussed earlier, OSHA is using NFPA 70E as the basis for its proposed rule, with some modifications as necessary for regulatory and enforcement purposes.

Electricity has long been recognized as a serious workplace hazard exposing employees to dangers such as electric shock, electrocution, fires, and explosions. The 100-year-long history of the National Electrical Code, originally formulated and periodically updated by industry consensus, attests to this fact. The NEC has represented the continuing efforts of experts in electrical safety to address these hazards and provide standards for limiting exposure in all electrical installations, including workplaces. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, and that this proposed standard, which draws heavily on the experience of the NEC, is reasonably necessary to provide protection from these hazards.

According to the U.S. Bureau of Labor Statistics, between 1992 and 2002, an average of 295 workers died per year from contact with electric current, and, between 1992 and 2001, an average of 4,309 workers lost time away from work because of electrical injuries.[6] Overall, there has been a downward trend in injuries and illnesses, but the percentage of decline has varied from year to year. From 1992 to 2001, the number of injuries involving days away from work decreased by 29 percent. From 1992 to 2002, the number of deaths decreased by 9 percent. This downward trend is due, in major part, to 30 years of highly protective OSHA regulation in the area of electrical installation, based on the NEC and NFPA 70E standards. The proposal would carry forward most of the existing requirements for electrical installations, with the new and revised requirements intended as fine tuning, introducing new technology along with other improvements in safety. If employers comply with the proposal, they will prevent unsafe electrical conditions from occurring. Thus, OSHA expects this downward trend in injuries to continue.

While the number of deaths and injuries associated with electrical hazards has declined, contact with electric current still poses a significant risk to employees in the workplace. This proposed rule will help further reduce the number of deaths and injuries associated with electrical hazards by providing additional requirements for installation safety and by recognizing alternative means of compliance.

V. Summary and Explanation of the Proposed Rule

A. Scope

Existing §§ 1910.302 through 1910.308 of Subpart S apply to electrical installations and utilization equipment used and installed in workplaces in general industry and in shipyard employment, longshoring, and marine terminals. These sections do not apply to the following types of installations:

(1) Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles;

(2) Installations underground in mines;[7]

(3) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes;

(4) Installations of communication equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations; and

(5) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy. These exempted installations must be located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

These exempted installations present special design considerations that are not adequately addressed in Subpart S. For example, electric power transmission and distribution installations are typically installed where unqualified persons will not have access to them, and the only employees working on them are highly trained and skilled. Additionally, public safety considerations demand that these installations be capable of quick repair when weather or equipment failure disrupt electrical service. The National Electrical Safety Code (ANSI/IEEE C2), which is developed by experts in electric power generation, transmission, and distribution, contains design and installation requirements applicable to electric power transmission and distribution systems. Section 1910.269 contains OSHA's standard for the maintenance of electric power generation, transmission, and distribution installations. While it consists mostly of work-practice

[6] *The Survey of Occupational Injuries and Illnesses* and the *Census of fatal occupational injuries, http://www.bls.gov/iif/home.htm#tables.*

[7] This exception was incorporated into the current OSHA standard solely to be consistent with language used in the NEC and NFPA 70E. However, it should be noted that OSHA does not have jurisdiction over mines in general, regardless of whether the mining activity takes place above ground or underground. Under the Mine Safety and Health Act (MSH Act) (30 U.S.C. 801 *et seq.*), the Mine Safety and Health Administration (MSHA) regulates safety and health in mines. The MSH Act defines "mine" very broadly as:

(h)(1) "coal or other mine" means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

(2) For purposes of subchapters II, III, and IV of this chapter, "coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

For further information, see the Interagency Agreement between MSHA and OSHA (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=222).*

requirements, it does contain several installation requirements. For example, § 1910.269(u)(4) and (v)(4) cover guarding of rooms containing electric supply equipment in electric power generating stations and substations, respectively. OSHA believes that any installation requirements for electric power generation, transmission, and distribution systems belong in § 1910.269 rather than in Subpart S.

Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles (other than mobile homes and recreational vehicles) are designed to be transportable.[8] These transportability considerations make many of the design requirements in Subpart S irrelevant, at best, or infeasible, at worst. For example, attaching the grounded circuit conductor and the equipment grounding conductor to a permanent grounding electrode on a transportable wiring system is generally not feasible. Thus, the provisions of proposed § 1910.304(g)(1), which contains requirements for grounding electrical systems, are inappropriate for the wiring of ships, watercraft, railway rolling stock, aircraft, or automotive vehicles. By contrast, however, wiring that is not a part of the wiring of the ship, watercraft, railway rolling stock, aircraft, or automotive vehicle would be covered by Subpart S, as appropriate. For example, a portable electric drill carried into the cargo area of a truck would be covered by Subpart S if it is plugged into the wiring of a service station.

In regard to ships, there has been some confusion about whether the "exemption" applies to all wiring or electrical installations brought on board a vessel during construction, overhaul, or repair, even when the wiring is supplied by shore-based electric power—or whether it only applies to the ships' own wiring. OSHA is hereby clarifying its position.

The "exempted" types of installations in both the current and proposed standards are identical to those "exempted" by the National Electrical Code and NFPA 70E, which form the basis of both. Installations covered under the existing standard would continue to be covered under the proposal. For example, in longshoring operations and related employments, this proposal would apply to electrical installations aboard vessels only if they are shore-based as stated in § 1918.1(b)(3). Electrical installations in marine terminals are covered under Subpart S, as noted in § 1917.1(a)(2)(iv). (The marine terminals standard in Part 1917 applies to the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, and any other activity within and associated with the overall operation and function of the terminal. This includes the use and routine maintenance of facilities and equipment and cargo transfer accomplished with the use of shore-based material handling devices. See § 1917.1(a).)

Section 1910.5 governs how the general industry electrical standards apply to shipyard employment. According to § 1910.5(c)(2), the general standards in Part 1910 apply to the extent that no industry-specific standard (such as Subpart K of Part 1926 for construction) applies to the "same condition, practice, means, method, operation, or process." Part 1915 contains few requirements related to electrical safety. Paragraph (b) of § 1915.93 contains four such requirements, for grounding of vessels, the safety of the vessel's wiring, overcurrent protection, and guarding of infrared heat lamps. Section 1915.92 contains provisions on electric lighting, and § 1915.132 contains requirements on portable electric tools. Section 1915.181 contains electrical safety-related work practices for deenergizing electric circuits and protecting employees against contact with live parts during electrical work. In addition, Part 1915 contains several other miscellaneous electrical safety-related work practices and electrical design requirements. These provisions continue to apply in lieu of any corresponding requirements in Subpart S of Part 1910. Conversely, where there is no specific standard for shipyard employment in Part 1915, Subpart S of Part 1910 applies.[9]

As noted earlier, Subpart S does not cover installations in ships, but it does cover installations used on ships if the installation is shore-based (that is, not part of the vessel's internal electrical system). Thus, § 1910.303(g)(2) (guarding live parts) applies to the wiring of the shipyard and to any wiring taken onto the ship when it is supplied by the shipyard wiring. It does *not* apply to the ship's wiring. The proposed rule does not change this scope of coverage. However, OSHA invites comments on whether it needs to clarify this coverage further.

B. Grandfather Clause

The proposal, as does the current rule, exempts older electrical installations from meeting some of the provisions of the Design Safety Standards for Electrical Systems (that is, §§ 1910.302 through 1910.308). The extent to which OSHA's electrical installation standard applies depends on the date the installation was made. Older installations must meet fewer requirements than newer ones. The proposal's grandfathering of older installations, contained in paragraph (b) of proposed § 1910.302, is patterned after the current standard's grandfather provisions in existing § 1910.302(b). Most of the new provisions contained in the proposed rule would only apply prospectively, to installations made after the effective date of the final rule.

The following paragraphs explain proposed § 1910.302(b) in the following order: paragraph (b)(1), requirements applicable to all installations; paragraph (b)(4), requirements applicable only to installations made after the effective date of the revised standard; paragraph (b)(3), requirements applicable only to installations made after April 16, 1981; and paragraph (b)(2), requirements applicable only to installations made after March 15, 1972.

Requirements applicable to all installations. Paragraph (b)(1) of proposed § 1910.302 contains a list of provisions that would apply to all installations, regardless of when they were designed or installed. The few requirements in this short list are so essential to employee safety that even the oldest electrical installations must be modified, if necessary, to meet them. The list is unchanged from the current standard, except for the addition of the zone classification system and a documentation requirement from proposed § 1910.307. As discussed in more detail later in this section of the preamble, the only substantial new provisions being proposed in § 1910.307 are: (1) New requirements in § 1910.307(g) pertaining to electric equipment installed in Class I hazardous locations if the employer chooses to use the zone classification system and (2) a new requirement in § 1910.307(b) for employers to document the extent of each hazardous location. This second provision applies

[8] Although the wiring of recreational vehicles and mobile homes is transportable, it is also designed to be attached to specially designed, permanently installed power distribution outlets. This type of hybrid system must be designed for both permanent and transportable uses.

[9] It should be noted that, unlike the shipyard employment standards, OSHA's construction standards have a comprehensive electrical installation standard in Subpart K of Part 1926, which covers all aspects of electrical safety that are addressed in the electrical installation standard for general industry. Thus, none of the electrical installation requirements in Subpart S of Part 1910 apply in construction.

to older installations only if the employer is using the zone classification system.

The new requirements pertaining to zone classification in proposed § 1910.307(g) provide employers with an alternative installation method that the current standard does not permit.[10] Thus, applying these provisions to older installations would give employers greater flexibility without imposing any new costs.

Paragraph (b) of § 1910.307 proposes a new requirement that employers document areas designated as hazardous (classified) locations. This requirement would ensure that the employer has records of the extent and classification of each such area. The documentation would help employers determine what type of equipment was needed in these locations and would inform employees of the need for special care in the maintenance of the electric equipment installed there. OSHA has carefully considered the need to document these areas and has tried to balance that need with the extensive burden that would be placed on employers who would have to survey and document their existing hazardous locations.

The current standard's division classification system has been in place for many years, and most employers and inspection authorities are familiar with the boundaries for Class I, Division 1 and Class I, Division 2 locations. An employee servicing equipment in a Class I, Division 1 or 2 location can obtain this information relatively easily even if the employer has not documented the boundaries. Accordingly, OSHA believes that the benefit of documenting existing hazardous locations installed using the division classification system would be minimal. Therefore, for employers using the division system, OSHA is proposing to require documentation of boundaries only for new installations made after the effective date of the standard. Employers would not need to document existing division-classified systems.

On the other hand, the zone classification system is relatively new. Most employers are not familiar with this system and have little experience determining how to draw the boundaries between the three zones. Relatively few NFPA or industry standards provide specifications for placing those boundaries. Furthermore, the existing OSHA electrical standard recognizes only installations made in accordance with the division classification system, not the zone classification system. Any existing installation made under the zone system is technically out of compliance with OSHA's existing standard. However, because the NEC represents standard industry practice, existing zone system installations will almost certainly have been installed in accordance with an edition of the NEC that recognizes the zone classification system (the 1999 and 2002 editions). These editions of the NEC explicitly require documentation of hazardous locations. Thus, an employer with an existing installation made under the zone classification system should already have the documentation required by § 1910.307(b). Therefore, OSHA believes that the benefits of having documentation for existing zone-classified installations justify the small burden that would be placed on employers. For these reasons, OSHA is proposing to apply the documentation requirement to all hazardous location installations made under the zone classification system. This will provide employers, employees, and OSHA with information critical for determining which equipment is suitable in a given hazardous location.

Requirements applicable only to installations made after the effective date of the final rule. Paragraph (b)(4) of proposed § 1910.302 would make the following provisions applicable only to installations made or overhauled[11] after the effective date of the final rule:

- § 1910.303(f)(4)—Disconnecting means and circuits—Capable of accepting a lock
- § 1910.303(f)(5)—Disconnecting means and circuits—Marking for series combination ratings
- § 1910.303(g)(1)(iv) and (g)(1)(vii)—600 Volts, nominal, or less—Space about electric equipment
- § 1910.303(h)(5)(vi)—Over 600 volts, nominal—Working space and guarding
- § 1910.304(b)(1)—Branch circuits—Identification of multiwire branch circuits
- § 1910.304(b)(3)—Branch circuits—Identification of ungrounded conductors
- § 1910.304(b)(4)(i)—Branch circuits—Ground-fault circuit interrupter protection for personnel
- § 1910.304(f)(2)(i)(A), (f)(2)(i)(B) (but not the introductory text to § 1910.304(f)(2)(i), and (f)(2)(iv)(A)—Overcurrent protection—Overcurrent protection, feeders and branch circuits for over 600 volts, nominal
- § 1910.305(a)(3)(v)—Wiring methods—Cable trays
- § 1910.305(c)(3)(ii)—Switches—Connection of switches
- § 1910.305(c)(5)—Switches—Grounding
- § 1910.306(a)(1)(ii)—Electric signs and outline lighting—Disconnecting means
- § 1910.306(c)(4)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Operation
- § 1910.306(c)(5)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Location
- § 1910.306(c)(6)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Identification and signs
- § 1910.306(c)(7)—Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Single-car and multicar installations
- § 1910.306(j)(1)(iii)—Swimming pools, fountains, and similar installations—Receptacles
- § 1910.306(k)—Carnivals, circuses, fairs, and similar events
- § 1910.308(a)(5)(v) and (a)(5)(vi)(B)—Systems over 600 volts, nominal—Interrupting and isolating devices
- § 1910.308(a)(7)(vi)—Systems over 600 volts, nominal—Tunnel installations
- § 1910.308(b)(3)—Emergency power systems—Signs
- § 1910.308(c)(3)—Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Separation from conductors of other circuits
- § 1910.308(f)—Solar photovoltaic systems

These provisions are based on requirements that have been added to the National Electrical Code since the 1978 edition. OSHA has never required employers to comply with these requirements, and the Agency believes that the modest increase in employee protection that would result from compliance with them would not be worth the substantial expense that employers would incur if existing installations had to be retrofitted to conform to those provisions. On the other hand, employers would incur minimal costs to achieve this increase in protection if they only needed to assure that new installations comply with the listed provisions. In local jurisdictions requiring compliance with the NEC, there should be no additional costs involved, because the installations would already conform to the new OSHA requirements. The Agency believes that even in other jurisdictions, the vast majority of installations already

[10] See the discussion under the heading "Zone Classification" for an explanation of the zone classification system and its differences from the current standard's division classification system.

[11] See the discussion of the term "overhaul" later in this section of the preamble.

comply with the latest edition of the NEC, because compliance with the latest Code is standard industry practice.

OSHA is considering making the new requirements in revised Subpart S effective 90 days after the final rule is published in the **Federal Register**. The Agency requests comments on whether this provides sufficient time to implement the changes required by the revised standard. It should be noted that applying new provisions only to new installations is the same approach that OSHA took in promulgating the current version of Subpart S in 1981. The Agency found that this approach was successful and has no indication that it was unduly burdensome or insufficiently protective.

There are also many provisions in proposed Subpart S that are not contained in the existing standard but cannot be considered totally "new" provisions. Most of these "new" requirements were actually contained in the 1971 NEC. Table 1 lists these "new" provisions and denotes their counterparts in the 1971 NEC. From March 15, 1972, until April 16, 1981, Subpart S incorporated the 1971 NEC by reference in its entirety. Accordingly, OSHA required employers to comply with every requirement in the 1971 NEC for any new installation made between those dates and for any replacement, modification, repair, or rehabilitation made during that period. The current standard, which became effective on April 16, 1981, omitted many of the detailed provisions of the NEC because they were already addressed by the more general requirements that were contained in the OSHA standard. For example, OSHA did not carry forward 1971 NEC Section 110–11, which required equipment to be suitable for the environment if it is installed where the environment could cause deterioration. However, the requirement for equipment to be suitable for the location in which it was installed is implicit in the more general requirements in existing § 1910.303(a) that equipment be approved and in existing § 1910.303(b)(2) that equipment be installed in accordance with any instructions included in its listing or labeling. (Equipment that is not suitable for installation in deteriorating environments, such as wet or damp locations, will include instructions warning against such installation. These instructions are required by the nationally recognized laboratory listing or labeling the product.)

Even though OSHA has not required employers to maintain their installations in compliance with these older provisions, the Agency believes that employers' installations actually do comply with those requirements. The vast majority of employers are following the entire National Electrical Code applicable to their installations, as noted in the Economic Analysis section of this preamble.[12] For these reasons, OSHA is not proposing to exempt installations made after March 15, 1972, from meeting any provision listed in Table 1 and is not including any of these provisions in § 1910.302(b)(4) (the list of provisions that apply only to new installations). The Agency invites public comment on whether this approach is reasonable.

TABLE 1.—"NEW" PROVISIONS CONTAINED IN 1971 NEC[13]

Proposed provision	Equivalent 1971 NEC section	Subject
§ 1910.303(b)(3)	110–20	Insulation integrity.
(b)(4)	110–9	Interrupting rating.
(b)(5)	110–10	Circuit impedance and other characteristics.
(b)(6)	110–11	Deteriorating agents.
(b)(7)	110–12	Mechanical execution of work.
(b)(8)	110–4(a) and (d)	Mounting and cooling of equipment.
	110–12	
	110–13	
(c)(1)	110–14	Electrical connections, general.
§ 1910.304(b)(2)	210–21(b)	Branch circuits, receptacles and cord connectors.
(b)(5)	210–21	Branch circuits, outlet devices.
(b)(6)	210–22	Branch circuits, cord connections.
(e)(1)(iv)	230–70(c)	Services, disconnecting means.
(f)(1)(ix)	110–9	Overcurrent protection, 600 volts, nominal, or less, circuit breaker ratings.
	240–11	
(f)(2), except for (f)(2)(i)(A), (f)(2)(i)(B), and (f)(2)(iv)(A).	240–5	Overcurrent protection, feeders and branch circuits over 600 volts, nominal.
	240–11	
	240–15	
§ 190.305(a)(4)(ii)	320–5	Open wiring on insulators, support.
(b)(1)(iii)	370–7	Conductors entering cabinets, boxes, and fittings, securing conductors.
	373–5	
(b)(2)(ii)	370–15(b)	Fixture canopy or pan installed in a combustible wall or ceiling.
(e)(1)	373–2	Airspace for enclosures installed in wet or damp locations.
	384–5	
(h)(3)	710–6	Portable cables, grounding conductors.
(j)(2)(i)	410–52(d)	Receptacles, cord connectors, and attachment plugs; no exposed energized parts.
(j)(2)(iv) through (j)(2)(vii)	410–54	Receptacles installed in wet or damp locations.
(j)(3)(ii)	422–20	Appliances, disconnecting means.
(j)(3)(iii)	422–30(a)	Appliances, nameplates.
(j)(3)(iv)	422–30(b)	Appliances, marking to be visible after installation.
(j)(6)(ii)(A)	110–9	Capacitor switches.
	110–10	

[12] All of the requirements in question appear in some version in every edition of the NEC since 1972.

TABLE 1.—"NEW" PROVISIONS CONTAINED IN 1971 NEC[13]—Continued

Proposed provision	Equivalent 1971 NEC section	Subject
	460–8(c)(4)	
(j)(6)(ii)(B)	460–8(c)(1)	Capacitor disconnecting means.
§ 1910.306(c)(3)	620–51(a)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts; type of disconnecting means.
(c)(10)	620–72	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts; motor controllers.
(d)(1)	630–13 630–23	Arc welders, disconnecting means.
(g)(1)(iii)	665–34	Induction and dielectric heating equipment, detachable panels used for access to live parts.
(g)(1)(vi)	665–8	Induction and dielectric heating equipment, ampere rating of disconnecting means.
(j)(4)(iii)	680–20(a)(4)	Swimming pools, fountains, and similar installations, underwater fixtures facing upwards.
§ 1910.308(a)(2)	710–4	Systems over 600 volts, nominal; open installations of braid-covered insulated conductors.
(a)(3)(i)	710–6	Systems over 600 volts, nominal; insulation shielding terminations.
(a)(4)	710–8	Systems over 600 volts, nominal; moisture or mechanical protection for metal-sheathed cables.
(a)(5)(i)	710–21(a)	Systems over 600 volts, nominal; interrupting and isolating devices; guarding and indicating.
(a)(5)(ii)	240–11(a) 710–21(b)	Systems over 600 volts, nominal; interrupting and isolating devices; fuses.
(a)(5)(iii) and (a)(5)(iv)	710–21(b)	Systems over 600 volts, nominal; interrupting and isolating devices; fused cutouts.
(a)(5)(vi), but not (a)(5)(vi)(B).	710–21(c)	Systems over 600 volts, nominal; interrupting and isolating devices; load interrupter switches.
(a)(5)(vii)	710–22	Systems over 600 volts, nominal; interrupting and isolating devices; means for isolating equipment.
(b)(2)	700–14	Emergency systems, emergency illumination.

[13] These provisions have no counterpart in existing Subpart S, but were in the 1971 National Electrical Code.

In addition, OSHA is not including in the list of new provisions in proposed § 1910.302(b)(4) any proposed provision that merely provides an alternative means of compliance for an existing requirement. For example, as noted earlier, § 1910.307(g) provides alternative requirements for installations in hazardous (classified) locations based on the zone classification system rather than the division classification system that is required under the existing standard. Such requirements accept alternative installation techniques recognized as being equally protective by the NEC and NFPA 70E, and there is no need to limit them to new installations.

OSHA also believes that there is no need to grandfather requirements that apply only to temporarily installed equipment and wiring.[14] The few new requirements applying to temporarily installed equipment and wiring have been in the National Electrical Code since at least 1999 and, in most cases, since before that. Employers should already be in compliance with such requirements since the temporary installations almost certainly were put into place well after 1999. For example, proposed § 1910.304(b)(4)(ii) contains requirements for providing ground-fault circuit interrupter protection for temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar activities. Temporary wiring installations used for any of these purposes were likely to have been installed well after 1999. An employer who is complying with the 1999 or later edition of the NEC will already be complying with this provision of the proposal. Even employers who are not complying with recent versions of the NEC for temporary wiring will face only the minimal cost of providing ground-fault circuit interrupters; no changes would need to be made to any existing permanent wiring, which might involve considerably more costs. The Agency requests comments on whether any new requirements applying only to temporarily installed equipment or wiring should also be listed in § 1910.302(b)(4), and why.

Additionally, OSHA recognizes that, in a proposed standard this extensive, some new requirements might have been overlooked and some subtle changes in existing requirements might have unanticipated consequences. Therefore, the Agency requests comments on whether there are any other new or revised requirements in the proposal that should not apply to existing installations.

Requirements applicable only to installations made after April 16, 1981. Paragraph (b)(3) of § 1910.302 lists requirements that apply only to installations made after April 16, 1981. This proposed paragraph carries forward essentially the same list as is currently in § 1910.302(b)(3). No provisions have been added to or removed from the list.

Requirements applicable only to installations made after March 15, 1972. Paragraph (b)(2) of existing § 1910.302 requires all installations made after March 15, 1972, and every major replacement, modification, repair, or rehabilitation made after that date to meet all the installation requirements in Subpart S except for those listed in § 1910.302(b)(3) and (b)(4). A note following existing § 1910.302(b)(2) indicates that "major replacements, modifications, repairs, or rehabilitations" include work similar to that involved when a new building or

[14] For the purposes of this discussion, "temporarily installed equipment or wiring" is wiring and equipment installed on a short-term rather than a long-term or permanent basis. It includes temporary wiring covered by proposed § 1910.305(a)(2) and other equipment and wiring similarly installed on a short-term basis.

facility is built, a new wing is added, or an entire floor is renovated.

Paragraph (b)(2) of proposed § 1910.302 would require all installations built or overhauled after March 15, 1972, to comply with all of the requirements of §§ 1910.302 through 1910.308, except as provided in § 1910.302(b)(3) and (b)(4). As discussed earlier, these latter two paragraphs limit the application of newer provisions of Subpart S to installations made during later periods.

In the proposal, OSHA is introducing the term "overhaul" to include the types of activities that would trigger compliance with the otherwise grandfathered provisions of Subpart S for older installations. "Overhaul" is defined as follows:

> *Overhaul* means to perform a major replacement, modification, repair, or rehabilitation similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.

Thus, this new term, which is based on language in current Subpart S, incorporates all the elements of "major replacement, modification, or rehabilitation" in the text of existing § 1910.302(b)(2) and in the note following that provision. OSHA believes that the proposed language will simplify the standard without making any substantive change to the way in which Subpart S applies to older installations.

C. Summary of Changes in §§ 1910.303 Through 1910.308

The Distribution Table for Subpart S lists all the provisions and sections from §§ 1910.303 through 1910.308 of the electrical standard. This table summarizes any proposed changes being made to the standard that involve grammatical edits, additions, removals, and paragraph numbers. There are places in the standard where no substantial change is made. Most of the changes are editorial in nature. Some of the requirements would be removed because the material is considered outdated. However, the substantive changes to be made to the standard will be discussed in further detail following this section.

DISTRIBUTION TABLE

OLD—section	NEW—section	Description of changes and rationale
See the note at the end of the table		
§ 1910.303 General	§ 1910.303 General	
1910.303(a)	1910.303(a)	No substantive change. A reference to the § 1910.399 definition of "approved" is added for clarification.
1910.303(b)(1), introductory text	1910.303(b)(1), introductory text	No substantive change.
1910.303(b)(1)(i)	1910.303(b)(1)(i)	No substantive change.
1910.303(b)(1)(ii)	1910.303(b)(1)(ii)	No substantive change.
	1910.303(b)(1)(iii)	**Adds wire-bending and connection space to the list of things to consider when judging equipment.
1910.303(b)(1)(iii)	1910.303(b)(1)(iv)	No substantive change.
1910.303(b)(1)(iv)	1910.303(b)(1)(v)	No substantive change.
1910.303(b)(1)(v)	1910.303(b)(1)(vi)	No substantive change.
1910.303(b)(1)(vi)	1910.303(b)(1)(vii)	No substantive change.
1910.303(b)(1)(vii)	1910.303(b)(1)(viii)	No substantive change.
1910.303(b)(2)	1910.303(b)(2)	No substantive change.
	1910.303(b)(3)	**Adds a requirement for completed wiring to be free from short circuits and grounds other than those required in the standard.
	1910.303(b)(4)	**Adds requirements for equipment intended to interrupt current to have adequate interrupting ratings.
	1910.303(b)(5)	**Adds requirements for the coordination of overcurrent protection for circuits and equipment.
	1910.303(b)(6)	**Adds a requirement for conductors and equipment to be identified for the purpose when installed in an environment containing deteriorating agents.
	1910.303(b)(7)	**Adds requirements for installing electric equipment in a neat and workmanlike manner.
	1910.303(b)(8)	**Adds requirements for equipment to be mounted securely and to allow for proper cooling.
	1910.303(c)(1)	**Adds requirements to ensure that electrical connections are secure and electrically safe.
	1910.303(c)(2)(i)	**Adds requirements for connections at terminals.
	1910.303(c)(2)(ii)	**Adds requirements for the identification of terminals intended for connection to more than one conductor or to aluminum.
1910.303(c)	1910.303(c)(3)(i)	No substantive change.
	1910.303(c)(3)(ii)	**Adds a requirement that wire connectors or splicing means installed on directly buried conductors be listed for such use.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.303(d)	1910.303(d)	No substantive change.
1910.303(e)	1910.303(e)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.303(f)	1910.303(f)(1) 1910.303(f)(2) 1910.303(f)(3)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.303(f)(4)	Adds a requirement for disconnecting means required by Subpart S to be capable of accepting a lock. This provision is added to make the Subpart S requirements on disconnecting means consistent with § 1910.147(c)(2)(iii), which requires energy isolating devices (a generic term, which includes electrical disconnecting means) to be designed to accept a lockout device.
	1910.303(f)(5)	**Adds marking requirements for series combination ratings of circuit breakers or fuses.
1910.303(g)(1), introductory text	1910.303(g)(1), introductory text	No substantive change.
1910.303(g)(1)(i)	1910.303(g)(1)(i) Table S–1, Note 3	**The proposal revises the language to clarify how wide and high the clear space must be.
1910.303(g)(1)(ii)	1910.303(g)(1)(ii)	No substantive change.
1910.303(g)(1)(iii)	1910.303(g)(1)(iii)	No substantive change.
	1910.303(g)(1)(iv)	**Adds a requirement for a second entrance on equipment rated 1200 amperes under certain conditions.
1910.303(g)(1)(iv)	1910.303(g)(1)(i)(B)	**Reduced the minimum width of the clear space to 762 mm.
1910.303(g)(1)(v)	1910.303(g)(1)(v)	**Adds a prohibition against controlling illumination for working spaces by automatic means only.
1910.303(g)(1)(vi)	1910.303(g)(1)(vi)	**Increased the minimum height of the working space from 1.91m to 1.98m for new installations.
	1910.303(g)(1)(vii)	** Adds requirements for switchboards, panelboards, and distribution boards installed for the control of light and power circuits, and motor control centers to be installed in dedicated space and to be protected against damage.
1910.303(g)(2)(i)	1910.303(g)(2)(i)	No substantive change.
1910.303(g)(2)(ii)	1910.303(g)(2)(ii)	No substantive change.
1910.303(g)(2)(iii)	1910.303(g)(2)(iii)	No substantive change.
1910.303(h)(1)	1910.303(h)(1)	No substantive change.
1910.303(h)(2), introductory text	1910.303(h)(2)(i) 1910.303(h)(2)(ii)	**The minimum height of fences restricting access to electrical installations over 600 V is reduced from 2.44 m to 2.13 m.
1910.303(h)(2)(i) 1910.303(h)(2)(ii)	1910.303(h)(2)(iii) 1910.303(h)(2)(iv) 1910.303(h)(2)(v) 1910.303(h)(5)(iii)	**1. The proposal organizes these requirements on the basis of whether the installations are indoors or outdoors. (The existing standard organizes them on the basis of whether or not the installations are accessible to unqualified employees.) 2. Adds requirements intended to prevent tampering by the general public. 3. Removes requirement to lock underground box covers weighing more than 45.4 kg.
1910.303(h)(3), introductory text	1910.303(h)(3)	No substantive change.
1910.303(h)(3)(i)	1910.303(h)(5)(i) Table S–2, Note 3	**The distances in Table S–2 for the depth of working space in front of electric equipment are increased for new installations to match the distances in NFPA 70E–2000.
1910.303(h)(3)(ii)	1910.303(h)(5)(iv)	No substantive change.
1910.303(h)(3)(iii)	1910.303(h)(5)(v)	**The distances in Table S–3 for the elevations of unguarded live parts are increased for new installations to match the distances in NFPA 70E–2000.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.303(h)(4)(i)	1910.303(h)(4)(i)	**The existing standard requires a second entrance to give access to the working space about switchboards and control panels over 600 V if the equipment exceed 1.22 m in width if it is practical to install a second entrance. The proposal requires an entrance on each end of switchboards and panelboards exceeding 1.83 m unless the working space permits a continuous and unobstructed way of travel or the working space is doubled. In addition, the proposal requires the lone entrance permitted under either of these exceptions to be at least the distance specified in Table S–2 from exposed live parts.
1910.303(h)(4)(ii)	1910.303(h)(4)(ii)	No substantive change.
	1910.303(h)(5)(ii)	**Adds requirements for equipment operating at 600 V or less installed in rooms or enclosures containing exposed live parts or exposed wiring operating at more than 600 V.
	1910.303(h)(5)(vi)	**Adds requirements limiting the installation of pipes or ducts that are foreign to electrical installation operating at more than 600 V.
§ 1910.304 Wiring design and protection	§ 1910.304 Wiring design and protection.	
1910.304(a)(1)	1910.304(a)(1)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.304(a)(2)	1910.304(a)(2)	No substantive change.
1910.304(a)(3)	1910.304(a)(3)	No substantive change.
	1910.304(b)(1)	**Adds requirements for the identification of multiwire branch circuits.
	1910.304(b)(2)(i)	**Adds requirements that receptacles installed on 15- and 20-ampere circuits be of the grounding type and that grounding-type receptacles be installed in circuits within their rating.
	1910.304(b)(2)(ii)	**Adds a requirement for grounding contacts on receptacles to be effectively grounded.
	1910.304(b)(2)(iii)	**Adds requirements on the methods used to ground receptacles and cord connectors.
	1910.304(b)(2)(iv)	**Adds requirements on the replacement of receptacles.
	1910.304(b)(2)(v)	**Adds a requirement that receptacles installed on branch circuits having different voltages, frequencies, or types of current be noninterchangeable.
	1910.304(b)(3)	**Adds requirements on identification of ungrounded conductors on different systems.
	1910.304(b)(4)	**Adds requirements for ground fault circuit interrupter protection.
1910.304(b)(2)	1910.304(b)(5), introductory text	No significant change.
	1910.304(b)(5)(i)	**Adds requirements for ratings of lampholders.
	1910.304(b)(5)(ii)	**Adds requirements for ratings of receptacles.
	1910.304(b)(6)	**Adds requirements for receptacles to be installed wherever cords with attachment plugs are used.
1910.304(c), introductory text	1910.304(c), introductory text	No significant change. (The requirements in existing paragraph (c)(5) are placed in a separate paragraph (d).)
1910.304(c)(1)	1910.304(c)(1)	**Adds a requirement for the separation of conductors on poles.
1910.304(c)(2)	1910.304(c)(2)	Increases the minimum clearances for new installations of open conductors and service drops to match those in NFPA 70E–2000.
1910.304(c)(3)	1910.304(c)(3)(i)	No substantive change. (The proposal clarifies that paragraph (c)(2) applies to platforms, projections, or surfaces from which runs of open conductors can be reached.)

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
	1910.304(c)(3)(ii)	**Adds restrictions for installing overhead service conductors near building openings through which materials may be moved.
1910.304(c)(4)	1910.304(c)(4)	**Adds an exception to the minimum clearance requirement for conductors attached to the side of a building. (The proposal also clarifies that paragraph (c)(2) applies to roof surfaces that are subject to pedestrian or vehicular traffic.)
1910.304(c)(5)	1910.304(d)	No substantive change.
1910.304(d)(1)(i)	1910.304(e)(1)(i)	No substantive change.
1910.304(d)(1)(ii)	1910.304(e)(1)(ii)	No substantive change.
	1910.304(e)(1)(iii)	**Adds a requirement for service disconnecting means to be suitable for the prevailing conditions.
1910.304(d)(2)	1910.304(e)(2)	No substantive change.
1910.304(e)(1), introductory text	1910.304(f)(1), introductory text	No substantive change.
1910.304(e)(1)(i)	1910.304(f)(1)(i)	No substantive change.
1910.304(e)(1)(ii)	1910.304(f)(1)(ii)	No substantive change.
1910.304(e)(1)(iii)	1910.304(f)(1)(iii)	**The types of circuits that are allowed to have a single switch disconnect for multiple fuses are now specified in the standard.
1910.304(e)(1)(iv)	1910.304(f)(1)(iv)	No substantive change.
1910.304(e)(1)(v)	1910.304(f)(1)(v)	**Adds a requirement to clarify that handles of circuit breakers and similar moving parts also need to be guarded so that they do not injure employees.
1910.304(e)(1)(vi)(A)	1910.304(f)(1)(vi)	No substantive change.
1910.304(e)(1)(vi)(B)	1910.304(f)(1)(vii)	No substantive change.
1910.304(e)(1)(vi)(C)	1910.304(f)(1)(viii)	**Adds circuit breakers used on 277-volt fluorescent lighting circuits to the types of breakers required to be marked "SWD."
	1910.304(f)(1)(ix)	**Adds a requirement to clarify ratings of circuit breakers.
1910.304(e)(2)	1910.304(f)(2)	**Adds specific requirements on how to protect feeders and branch circuits energized at more than 600 volts.
1910.304(f), introductory text	1910.304(g), introductory text	No substantive change.
1910.304(f)(1), introductory text	1910.304(g)(1), introductory text	No substantive change.
1910.304(f)(1)(i)	1910.304(g)(1)(i)	No substantive change.
1910.304(f)(1)(ii)	1910.304(g)(1)(ii)	No substantive change.
1910.304(f)(1)(iii)	1910.304(g)(1)(iii)	No substantive change.
1910.304(f)(1)(iv)	1910.304(g)(1)(iv)	No substantive change. (The specific voltage ratings in existing paragraphs (g)(1)(iv)(B) and (g)(1)(iv)(C) are being removed. However, this is not a substantive change as those are the voltages used in the described systems.)
1910.304(f)(1)(v)	1910.304(g)(1)(v)	**Adds an exception to the requirement to ground systems for high-impedance grounded systems of 480 V to 1000 V under certain conditions.
1910.304(f)(2)		**Removed. The hazard is addressed in proposed § 1910.304(a)(1)(i), which requires conductors used as grounded conductors to be identifiable and distinguishable from other conductors.
	1910.304(g)(2)	**Relaxes requirements for grounding portable and vehicle mounted generators so that the requirements match those in OSHA's Construction Standards (§ 1926.404(f)(3)).
1910.304(f)(3)	1910.304(g)(3)	No substantive change.
1910.304(f)(4)	1910.304(g)(4)	No substantive change.
1910.304(f)(5)(i)	1910.304(g)(5)(i)	No substantive change.
1910.304(f)(5)(ii)	1910.304(g)(5)(ii)	No substantive change.
1910.304(f)(5)(iii)	1910.304(g)(5)(iii)	No substantive change.
1910.304(f)(5)(iv)	1910.304(g)(5)(iv)	**The exceptions for grounding fixed equipment operating at more than 150 V are extended to all fixed electric equipment regardless of voltage. Also, the proposal includes a new exception for double-insulated equipment.
	1910.304(g)(5)(v)	

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.304(f)(5)(v)	1910.304(g)(5)(vi) 1910.304(g)(5)(vii)	**Adds the following equipment to the list of cord- and plug-connected equipment required to be grounded: stationary and fixed motor-operated tools and light industrial motor-operated tools.
1910.304(f)(5)(vi)	1910.304(g)(6)	**Adds frames and tracks of electrically operated hoists to the list of nonelectrical equipment required to be grounded.
1910.304(f)(6)	1910.304(g)(7)	No substantive change.
1910.304(f)(7)(i)	1910.304(g)(8), introductory text	*No substantive change.
1910.304(f)(7)(ii)	1910.304(g)(8)(i)	No substantive change.
1910.304(f)(7)(iii)	1910.304(g)(8)(ii)	No substantive change.
§ 1910.305 Wiring methods, components, and equipment for general use.	§ 1910.305 Wiring methods, components, and equipment for general use.	
1910.305(a), introductory text	1910.305(a), introductory text	No substantive change.
1910.305(a)(1)(i)	1910.305(a)(1)(i)	**Adds a requirement that equipment be bonded so as to provide adequate fault-current-carrying capability. Also, clarifies that nonconductive coatings need to be removed unless the fittings make this unnecessary.
	1910.305(a)(1)(ii)	**Adds an exception to the bonding requirement for the reduction of electrical noise.
1910.305(a)(1)(ii)	1910.305(a)(1)(iii)	No substantive change.
1910.305(a)(2), introductory text	1910.305(a)(2), introductory text	No substantive change. Removes the provision allowing temporary wiring to be of a class less than permanent wiring per the 2002 NEC. The change has no substantive effect because temporary wiring is required to meet the same requirements regardless of the deleted language. (Both the proposal and the existing standard contain the following requirement: "Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall apply to temporary wiring installations.")
1910.305(a)(2)(i), introductory text	1910.305(a)(2)(i), introductory text	No substantive change.
1910.305(a)(2)(i)(A)	1910.305(a)(2)(i)(A)	Removes demolition from the list of activities for which temporary wiring is permitted . Demolition is one form of construction work, which is not covered by the Subpart S installation requirements.
1910.305(a)(2)(i)(B)	1910.305(a)(2)(i)(C)	**Adds emergencies to the list of activities for which temporary wiring is permitted.
1910.305(a)(2)(i)(C)	1910.305(a)(2)(i)(B)	No substantive change.
	1910.305(a)(2)(ii)	**Clarifies that temporary wiring must be removed when the project or purpose for which it was used has been completed.
1910.305(a)(2)(ii)	1910.305(a)(2)(iii)	No substantive change.
1910.305(a)(2)(iii)(A)	1910.305(a)(2)(iv)	**Feeders may now only be run as single insulated conductors when accessible to qualified employees only and used for experiments, development work, or emergencies. (Individual requirements are placed in separate paragraphs.)
1910.305(a)(2)(iii)(B)	1910.305(a)(2)(v)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.305(a)(2)(iii)(C)	1910.305(a)(2)(vi)	No substantive change.
1910.305(a)(2)(iii)(D)	1910.305(a)(2)(vii)	No substantive change.
1910.305(a)(2)(iii)(E)	1910.305(a)(2)(viii)	**Adds a requirement that disconnecting means for a multiwire circuit simultaneously disconnect all ungrounded conductors of the circuit.
1910.305(a)(2)(iii)(F)	1910.305(a)(2)(ix)	**This provision no longer allows installing fixtures or lampholders more than 2.1 meters above the working surface as a means of guarding. Also, the proposal adds a requirement for grounding metal-case sockets.
1910.305(a)(2)(iii)(G)	1910.305(a)(2)(x)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
	1910.305(a)(2)(xi)	**Adds requirements for cable assemblies and flexible cords and cables to be adequately supported.
1910.305(a)(3)(i)(A)	1910.305(a)(3)(i)	No substantive change.
1910.305(a)(3)(i)(B)	1910.305(a)(3)(ii)	**Adds several types of cables and single insulated conductors to the list of types permitted in industrial establishments.
	1910.305(a)(3)(iii)	**Adds a requirement limiting the use of metallic cable trays as an equipment grounding conductor.
1910.305(a)(3)(i)(C)	1910.305(a)(3)(iv)	No substantive change.
	1910.305(a)(3)(v)	**Adds a requirement limiting the use of nonmetallic cable trays.
1910.305(a)(3)(ii)	1910.305(a)(3)(vi)	No substantive change.
1910.305(a)(4)(i)	1910.305(a)(4)(i)	No substantive change.
1910.305(a)(4)(ii)	1910.305(a)(4)(ii)	**Adds specific support requirements for conductors smaller than No. 8.
1910.305(a)(4)(iii)	1910.305(a)(4)(iii)	No substantive change.
1910.305(a)(4)(iv)	1910.305(a)(4)(iv)	No substantive change.
1910.305(a)(4)(v)	1910.305(a)(4)(v)	No substantive change.
1910.305(b)(1)	1910.305(b)(1)(i)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.305(b)(1)(ii)	
	1910.305(b)(1)(iii)	**Adds requirements for supporting cables entering cabinets, cutout boxes, and meter sockets.
1910.305(b)(2)	1910.305(b)(2)(i)	No substantive change.
	1910.305(b)(2)(ii)	**Adds a requirement for any exposed edge of a combustible ceiling finish at a fixture canopy or pan to be covered with noncombustible material.
1910.305(b)(3)	1910.305(b)(3)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.305(c)(1)	1910.305(c)(1)	No substantive change.
	1910.305(c)(2)	
	1910.305(c)(3)(i)	
	1910.305(c)(3)(ii)	**Adds a requirement for load terminals on switches to be deenergized when the switches are open except under limited circumstances.
	1910.305(c)(4)	**Adds a specific requirement for flush-mounted switches to have faceplates that completely cover the opening and that seat against the finished surface.
1910.305(c)(2)	1910.305(c)(5)	**Adds a requirement to ground faceplates for snap switches.
1910.305(d)	1910.305(d)(1)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.305(d)(2)	
	1910.305(d)(3)	
1910.305(e)(1)	1910.305(e)(1)	**Adds a requirement for metallic cabinets, cutout boxes, fittings, boxes, and panelboard enclosures installed in damp or wet locations to have an air space between the enclosure and the mounting surface.
1910.305(e)(2)	1910.305(e)(2)	No substantive change.
1910.305(f)	1910.305(f)(1)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.305(f)(2)	
1910.305(g)(1)(i)	1910.305(g)(1)(i)	**Adds the following to the types of connections permitted for flexible cords and cables: portable and mobile signs and connection of moving parts. The proposal also clarifies that flexible cords and cables may be used for temporary wiring as permitted in § 1910.305(a)(2).
	1910.305(g)(1)(ii)	
1910.305(g)(1)(ii)	1910.305(g)(1)(iii)	No substantive change.
1910.305(g)(1)(iii)	1910.305(g)(1)(iv)	No substantive change. (Clarifies that flexible cords and cables may not be installed inside raceways.)
1910.305(g)(1)(iv)	1910.305(g)(1)(v)	**Permits additional cord types to be used in show windows and show cases.
1910.305(g)(2)(i)	1910.305(g)(2)(i)	**Adds new types of cords to the list of those that must be marked with their type designation.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.305(g)(2)(ii)	1910.305(g)(2)(ii)	**Changed the minimum size of hard service and junior hard service cords that may be spliced from No. 12 to 14.
1910.305(g)(2)(iii)	1910.305(g)(2)(iii)	No substantive change.
1910.305(h)	1910.305(h)	**Permits the minimum size of the insulated ground-check conductor of Type G-GC cables to be No. 10 rather than No. 8.
	1910.305(h)(1)	
	1910.305(h)(2)	
	1910.305(h)(3)	
	1910.305(h)(6)	
	1910.305(h)(7)	
	1910.305(h)(8)	
	1910.305(h)(4)	**Adds a requirement for shields to be grounded.
	1910.305(h)(5)	**Adds minimum bending radii requirements for portable cables.
1910..305(i)(1)	1910.305(i)(1)	No substantive change.
1910.305(i)(2)	1910.305(i)(2)	No substantive change.
1910.305(i)(3)	1910.305(i)(3)	**Also permits fixture wire to be used in fire alarm circuits.
1910.305(j)(1)(i)	1910.305(j)(1)(i)	No substantive change.
1910.305(j)(1)(ii)	1910.305(j)(1)(ii)	No substantive change. (Clarifies that metal-shell paper-lined lampholders may not be used for handlamps.)
1910.305(j)(1)(iii)	1910.305(j)(1)(iii)	**Adds a requirement that the grounded circuit conductor, where present, be connected to the screw shell.
1910.305(j)(1)(iv)	1910.305(j)(1)(iv)	No substantive change.
	1910.305(j)(2)(i)	**Adds requirements to ensure that attachment plugs and connectors have no exposed live parts.
1910.305(j)(2)(i)	1910.305(j)(2)(ii)	No substantive change.
	1910.305(j)(2)(iii)	**Clarifies that nongrounding-type receptacles may not be used with grounding-type attachment plugs.
1910.305(j)(2)(ii)	1910.305(j)(2)(iv)	No substantive change.
	1910.305(j)(2)(v)	**Adds requirements for receptacles outdoors to be installed in weatherproof enclosures appropriate for the use of the receptacle and for the location.
	1910.305(j)(2)(vi)	
	1910.305(j)(2)(vii)	
1910.305(j)(3)(i)	1910.305(j)(3)(i)	No substantive change.
1910.305(j)(3)(ii)	1910.305(j)(3)(ii)	**Adds a requirement to group and identify disconnecting means for appliances supplied by more than one source.
1910.305(j)(3)(iii)	1910.305(j)(3)(iii)	**Adds requirements for marking frequency and required external overload protection for appliances.
	1910.305(j)(3)(iv)	**Clarifies that markings must be visible or easily accessible after installation.
1910.305(j)(4)	1910.305(j)(4)	No substantive change.
1910.305(j)(4)(i)	1910.305(j)(4)(i)	No substantive change.
1910.305(j)(4)(ii)(A)	1910.305(j)(4)(ii)	No substantive change.
1910.305(j)(4)(ii)(B)	1910.305(j)(4)(iii)	No substantive change.
1910.305(j)(4)(ii)(C)		Removed. All disconnecting means must be capable of being locked in the open position by §§ 1910.302(c) and 1910.303(f)(4).
1910.305(j)(4)(ii)(D)	1910.305(j)(4)(iv)	No substantive change.
1910.305(j)(4)(ii)(E)	1910.305(j)(4)(v)	No substantive change.
1910.305(j)(4)(ii)(F)	1910.305(j)(4)(vi)	No substantive change.
1910.305(j)(4)(iii)	1910.305(j)(4)(vii)	No substantive change.
1910.305(j)(4)(iv)(A)		Removed. Covered by § 1910.303(g)(2), (h)(2), and (h)(5).
1910.305(j)(4)(iv)(B)	1910.305(j)(4)(viii)	No substantive change.
1910.305(j)(5)(i)	1910.305(j)(5)(i)	No substantive change.
1910.305(j)(5)(ii)	1910.305(j)(5)(ii)	No substantive change.
1910.305(j)(5)(iii)	1910.305(j)(5)(iii)	No substantive change.
1910.305(j)(5)(i)(iv)	1910.305(j)(5)(i)(iv)	No substantive change. (Oil-insulated transformers installed indoors are presumed to present a hazard to employees, and lack of employee exposure to a hazard is an affirmative defense.)
1910.305(j)(5)(i)(v)	1910.305(j)(5)(i)(v)	No substantive change.
1910.305(j)(5)(i)(vi)	1910.305(j)(5)(i)(vi)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.305(j)(5)(i)(vii)	1910.305(j)(5)(i)(vii)	No substantive change.
1910.305(j)(5)(i)(viii)	1910.305(j)(5)(i)(viii)	No substantive change.
1910.305(j)(6)(i)	1910.305(j)(6)(i)	No substantive change.
1910.305(j)(6)(ii), introductory text	1910.305(j)(6)(ii), introductory text	No substantive change.
	1910.305(j)(6)(ii)(A)	**Adds requirements to provide disconnecting means of adequate capacity for capacitors operating at more than 600 V.
	1910.305(j)(6)(ii)(B)	
1910.305(j)(6)(ii)(A)	*1910.305(j)(6)(ii)(C)	No substantive change.
1910.305(j)(6)(ii)(B)	1910.305(j)(6)(ii)(D)	No substantive change.
1910.305(j)(7)	1910.305(j)(7)	No substantive change.
§ 1910.306 Specific purpose equipment and installations..	§ 1910.306 Specific purpose equipment and installations..	
1910.306(a)(1)	1910.306(a)(1)(i)	**Reorganized and clarified the requirements for disconnecting means for signs. The proposal does not apply these requirements to exit signs.
	1910.306(a)(2)(i)	
	1910.306(a)(2)(ii)	
1910.306(a)(2)	1910.306(a)(2)(iii)	No substantive change.
1910.306(b), introductory text	1910.306(b), introductory text	No substantive change.
1910.306(b)(1)(i)	1910.306(b)(1)	**Adds specific requirements for the type and location of disconnecting means for runway conductors.
1910.306(b)(1)(ii)	1910.306(b)(2)	No substantive change. (The requirements are being reorganized.)
1910.306(b)(2)	1910.306(b)(3)	No substantive change.
1910.306(b)(3)	1910.306(b)(4)	No substantive change.
1910.306(c)	1910.306(c), introductory text	**This paragraph now covers wheelchair lifts, and stairway chair lifts.
1910.306(c)(1)	1910.306(c)(1)	No substantive change.
1910.306(c)(2)	1910.306(c)(8)	No substantive change.
1910.306(c)(3)	1910.306(c)(2)	No substantive change.
	1910.306(c)(3)	**Adds requirements for the type of disconnecting means.
	11910.306(c)(4)	**Adds requirements for the operation of disconnecting means.
	1910.306(c)(5)	**Adds requirements for the location of disconnecting means.
	1910.306(c)(6)	**Adds requirements for the identification of disconnecting means.
	1910.306(c)(7)	**Adds requirements for disconnecting means for single car and multicar installations supplied by more than one source.
	1910.306(c)(9)	**Adds requirements for warning signs for interconnected multicar controllers.
	1910.306(c)(10)	**Adds exceptions related to the location of motor controllers.
1910.306(d)(1)	1910.306(d)(1)	**Adds requirements for the type and rating of the disconnecting means.
1910.306(d)(2)	1910.306(d)(2)	Clarifies that a supply circuit switch may be used as a disconnecting means if the circuit supplies only one welder.
1910.306(e)	1910.306(e)	**Adds a requirement to group the disconnecting means for the HVAC systems serving information technology rooms with the disconnecting means for the information technology equipment. (The existing standard refers to this equipment as data processing equipment.)
1910.306(f), introductory text	1910.306(f), introductory text	**Adds coverage of X-rays for dental or medical use.
1910.306(f)(1)(i)	1910.306(f)(1)(i)	No substantive change.
1910.306(f)(1)(ii)	1910.306(f)(1)(ii)	No substantive change.
1910.306(f)(2)(i)	1910.306(f)(2)(i)	No substantive change.
1910.306(f)(2)(ii)	1910.306(f)(2)(ii)	No substantive change.
1910.306(g)(1)	1910.306(g), introductory text	No substantive change.
1910.306(g)(2)(i)	1910.306(g)(1)(i)	No substantive change.
1910.306(g)(2)(ii)	1910.306(g)(1)(ii)	No substantive change.
1910.306(g)(2)(iii)	1910.306(g)(1)(iii)	**Adds a requirement for the installation of doors or detachable panels to provide access to internal parts. Adds a requirement that detachable panels not be readily removable.
1910.306(g)(2)(iv)	1910.306(g)(1)(iv)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.306(g)(2)(v)	1910.306(g)(1)(v)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.306(g)(2)(vi)	1910.306(g)(1)(vi)	**Adds a requirement to ensure adequate rating of disconnecting means. The proposal also clarifies when the supply circuit disconnecting means may be used as the disconnecting means for induction and dielectric heating equipment.
1910.306(g)(3)	1910.306(g)(2)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.306(h)(1)	1910.306(h), introductory text	No substantive change.
1910.306(h)(2)	1910.306(h)(1)	No substantive change.
1910.306(h)(3)	1910.306(h)(2)	No substantive change.
1910.306(h)(4)(i)	1910.306(h)(3)	No substantive change. (The two provisions are combined into one paragraph.)
1910.306(h)(4)(ii)		
1910.306(h)(5)(i)	1910.306(h)(4)(i)	No substantive change.
1910.306(h)(5)(ii)	1910.306(h)(4)(ii)	No substantive change.
1910.306(h)(6)(i)	1910.306(h)(5)(i)	**Adds requirements limiting primary and secondary voltage on isolating transformers supplying receptacles for ungrounded cord- and plug-connected equipment. Also, adds requirement for overcurrent protection for circuits supplied by these transformers.
1910.306(h)(6)(ii)	1910.306(h)(5)(ii)	No substantive change.
1910.306(h)(6)(iii)	1910.306(h)(5)(iii)	No substantive change. (Individual requirements are placed in separate paragraphs.)
1910.306(h)(7)(i)	1910.306(h)(6)(i)	No substantive change.
1910.306(h)(7)(ii)		
1910.306(h)(7)(iii)	1910.306(h)(6)(ii)	No substantive change.
1910.306(h)(7)(iv)	1910.306(h)(6)(iii)	No substantive change.
1910.306(h)(8)	1910.306(h)(7)	No substantive change.
1910.306(h)(9)(i)	1910.306(h)(8)(i)	No substantive change.
1910.306(h)(9)(ii)	1910.306(h)(8)(ii)	No substantive change.
1910.306(i)(1)	1910.306(i)(1)	No substantive change.
1910.306(i)(2)	1910.306(i)(2)	**Allows the disconnecting means for a center pivot irrigation machine to be located not more than 15.2 m (50 ft) from the machine if the disconnecting means is visible from the machine. (Individual requirements are placed in separate paragraphs.)
1910.306(j)(1)	1910.306(j), introductory text	**Clarifies that hydro-massage bathtubs are covered by this paragraph.
1910.306(j)(2)(i)	1910.306(j)(1)(i)	No substantive change.
	1910.306(j)(1)(ii)	**Extends the boundary within which receptacles require GFCI protection from 4.57 m (15 ft) to 6.08 m (20 ft) for new installations.
	1910.306(j)(1)(iii)	**Adds requirements for the installation of at least one receptacle near permanently installed pools at dwelling units.
1910.306(j)(2)(ii)(A)	1910.306(j)(2)(i)	**Clarifies that ceiling suspended (paddle) fans are covered by this requirement.
1910.306(j)(2)(ii)(B)	1910.306(j)(2)(ii)	No substantive change.
1910.306(j)(3)	1910.306(j)(3)	No substantive change.
1910.306(j)(4)(i)	1910.306(j)(4)(i)	No substantive change.
1910.306(j)(4)(ii)	1910.306(j)(4)(ii)	No substantive change.
	1910.306(j)(4)(iii)	**Adds a requirement to guard lighting fixtures facing upward.
1910.306(j)(5)	1910.306(j)(5)	No substantive change.
	1910.306(k)	**Adds requirements for carnivals, circuses, fairs, and similar events.
§ 1910.307 Hazardous (classified) locations.	§ 1910.307 Hazardous (classified) locations..	
§ 1910.307(a)	1910.307(a)	**Adds the Zone classification system for Class I locations. (See detailed discussion later in this section of the preamble.)
	1910.307(b)	**Adds documentation requirements for hazardous locations classified using either the division or zone classification system.
1910.307(b), introductory text	1910.307(c), introductory text	No substantive change.
1910.307(b)(1)	1910.307(c)(1)	No substantive change.
1910.307(b)(2)(i)	1910.307(c)(2)(i)	No substantive change.
1910.307(b)(2)(i)(ii), introductory text	1910.307(c)(2)(ii), introductory text	No substantive change.
1910.307(b)(2)(ii)(A)	1910.307(c)(2)(ii)(A)	No substantive change.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
1910.307(b)(2)(ii)(B)	1910.307(c)(2)(ii)(B)	**Also permits fixtures approved for Class II, Division 2 locations to omit the group marking.
1910.307(b)(2)(ii)(C)	1910.307(c)(2)(ii)(C)	No substantive change.
1910.307(b)(2)(ii)(D)	1910.307(c)(2)(ii)(D)	No substantive change.
	1910.307(c)(2)(ii)(E)	**Adds a requirement that electric equipment suitable for an ambient temperature exceeding 40EC (104EF) be marked with the maximum ambient temperature.
1910.307(b)(3)	1910.307(c)(3)	No substantive change.
1910.307(b)(3), Note	1910.307(c)(3), Note	The last sentence of the note is removed to make it clear that the OSHA standard does not incorporate the National Electrical Code by reference. The NEC continues to be a guideline that employers may follow in determining the type and design of equipment and installations that will meet the OSHA standard.
1910.307(c)	1910.307(d)	No substantive change.
1910.307(d)	1910.307(e)	No substantive change.
	1910.307(f)	**The proposal lists the specific protective techniques for electrical installations in hazardous locations classified under the division classification system.
	1910.307(g)	**Adds the zone classification system as an alternative method of installing electric equipment in hazardous locations. This paragraph sets the protective techniques and other requirements necessary for safe installation of electric equipment in hazardous locations classified under the zone classification system. (See detailed discussion later in this section of the preamble.)
§ 1910.308 Special systems	§ 1910.308 Special systems	
1910.308(a), introductory text	1910.308(a), introductory text	No substantive change.
1910.308(a)(1)(i)	1910.308(a)(1)(i) 1910.308(a)(3)(ii)	**Adds the following wiring methods to those acceptable for installations operating at more than 600 V: electrical metallic tubing, rigid nonmetallic conduit, busways, and cable bus. The proposal also removes the specific requirement to support cables having a bare lead sheath or a braided outer covering in a manner to prevent damage to the braid or sheath. This hazard is covered by § 1910.303(b)(1) and (b)(8)(i) and new § 1910.308(a)(4).
1910.308(a)(1)(ii)	1910.308(a)(1)(ii)	No substantive change.
	1910.308(a)(2) 1910.308(a)(3)(i)	**Adds requirements to ensure that high-voltage cables can adequately handle the voltage stresses placed upon them and to ensure that any coverings are flame retardant.
	1910.308(a)(4)	**Adds requirements for the protection of high-voltage cables against moisture and physical damage where the cable conductors emerge from a metal sheath.
1910.308(a)(2)(i)	1910.308(a)(5)(i)	No substantive change.
	1910.308(a)(5)(ii)	**Adds requirements for fuses to protect each ungrounded conductor, for adequate ratings of fuses installed in parallel, and for the protection of employees from power fuses of the vented type.
1910.308(a)(2)(ii)	1910.308(a)(5)(iii)	**Clarifies that distribution cutouts are not suitable for installation in buildings or transformer vaults.
	1910.308(a)(5)(iv)	**Adds requirements for fused cutouts to either be capable of interrupting load current or be supplemented by a means of interrupting load current. In addition, a warning sign would be required for fused cutouts that cannot interrupt load current.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
	1910.308(a)(5)(v)	**Adds a requirement for guarding non-shielded cables and energized parts of oil-filled cutouts.
	1910.308(a)(5)(vi)	**Adds requirements to ensure that load interrupting switches will be protected against interrupting fault current and to provide for warning signs for backfed switches.
1910.308(a)(2)(iii)	1910.308(a)(5)(vii)	No substantive change.
1910.308(a)(3)(i)	1910.308(a)(6)(i)	No substantive change.
1910.308(a)(3)(ii)	1910.308(a)(6)(ii)	No substantive change.
1910.308(a)(4)(i)	1910.308(a)(7), introductory text.	No substantive change.
1910.308(a)(4)(ii)	1910.308(a)(7)(i)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.308(a)(7)(iii)	
	1910.308(a)(7)(ii)	**Clarifies that multiconductor portable cable may supply mobile equipment.
1910.308(a)(4)(iii)	1910.308(a)(7)(iv)	No substantive change. (Individual requirements are placed in separate paragraphs.)
	1910.308(a)(7)(v)	
	1910.308(a)(7)(vi)	**Limits the conditions under which switch or contactor enclosures may be used as junction boxes or raceways.
1910.308(a)(4)(iv)	1910.308(a)(7)(vii)	No substantive change.
1910.308(a)(4)(v)	1910.308(a)(7)(viii)	No substantive change.
1910.308(b)(1)	1910.308(b), introductory text	No substantive change.
1910.308(b)(2)	1910.308(b)(1)	No substantive change.
1910.308(b)(3)	1910.308(b)(2)	**Clarifies that emergency illumination includes all required means of egress lighting, illuminated exit signs, and all other lights necessary to provide required illumination.
	1910.308(b)(3)	**Adds requirements to provide signs indicating the presence and location of on-site emergency power sources under certain conditions.
1910.308(c)(1), introductory text	1910.308(c)(1), introductory text	No substantive change.
1910.308(c)(1)(i)	1910.308(c)(1)(i)	**Clarifies the definitions of Class 1, 2, and 3 remote control, signaling, and power-limited circuits based on equipment listing.
1910.308(c)(1)(ii)	1910.308(c)(1)(ii)	
1910.308(c)(1)(iii)	1910.308(c)(1)(iii)	
1910.308(c)(2)	1910.308(c)(2)	No substantive change.
	1910.308(c)(3)	**Adds requirements for the separation of cables and conductors of Class 2 and Class 3 circuits from cables and conductors of other types of circuits.
1910.308(d)(1)	1910.308(d)(1)	No substantive change.
1910.308(d)(2), introductory text	1910.308(d)(2), introductory text	No substantive change.
1910.308(d)(2)(i)	1910.308(d)(2)(i)	No substantive change.
1910.308(d)(2)(ii)	1910.308(d)(2)(ii)	**Adds a requirement for power-limited fire alarm circuit power sources to be listed and marked as such.
1910.308(d)(3)	1910.308(d)(3)(i)	No substantive change.
1910.308(d)(4)	1910.308(d)(3)(ii)	**Clarifies the requirements for installing power-limited fire-protective signaling circuits with other types of circuits. (Individual requirements are placed in separate paragraphs.)
	1910.308(d)(3)(iii)	
	1910.308(d)(3)(iv)	
1910.308(d)(5)	1910.308(d)(4)	No substantive change.
1910.308(e)(1)	1910.308(e), introductory text	No substantive change.
1910.308(e)(2)	1910.308(e)(1)	**Clarifies the requirement for listed primary protectors to make it clear that circuits confined within a block do not need protectors.
1910.308(e)(3)(i)	1910.308(e)(2)(i)	No substantive change.
	1910.308(e)(2)(ii)	
1910.308(e)(3)(ii)	1910.308(e)(2)(iii)	No substantive change.
1910.308(e)(3)(iii)	1910.308(e)(2)(iv)	No substantive change.
1910.308(e)(4)	1910.308(e)(3)	No substantive change.
1910.308(e)(5)(i)	1910.308(e)(4)(i)	No substantive change.
1910.308(e)(5)(ii)	1910.308(e)(4)(ii)	No substantive change.
1910.308(e)(5)(iii)	1910.308(e)(4)(iii)	No substantive change.
	1910.308(f)	**Adds requirements to separate conductors of solar photovoltaic systems from conductors of other systems and to provide a disconnecting means for solar photovoltaic systems.

DISTRIBUTION TABLE—Continued

OLD—section	NEW—section	Description of changes and rationale
	1910.308(g)	**Adds an exception to the provisions on the location of overcurrent protective devices for integrated electrical systems.

Note to table:
**These new and revised provisions are included in the 2000 edition of NFPA 70E standard. The NFPA 70E Committee believes that these provisions, which were taken from the 1999 NEC, are essential to employee safety. OSHA agrees with the consensus of NFPA's expert opinion that these requirements are reasonably necessary to protect employees and has included them in the proposed rule. On occasion, OSHA has rewritten the provision to lend greater clarity to its requirements. However, these editorial changes to the language of NFPA 70E do not represent substantive differences. NFPA's handling of these provisions and the rationale underpinning them is a matter of public record for the NEC and NFPA 70E. OSHA agrees with the rationale in this record as it pertains to the new and revised provisions the Agency is proposing. OSHA has placed the public record on all editions of the NEC and NFPA 70E after 1978 into the public docket for this rulemaking.

D. Branch Circuits-Ground Fault Circuit Interrupters for Employees

Introduction. Each year many employees suffer electric shocks while using portable electric tools and equipment. The nature of the injuries ranges from minor burns to electrocution. Electric shocks produced by alternating currents of power line frequency passing through the body of an average adult from hand to foot for 1 second can cause various effects, starting from a condition of being barely perceptible at 1 milliampere to loss of voluntary muscular control from 9 to 25 milliamperes. The passage of still higher currents can produce ventricular fibrillation of the heart from 75 milliamperes to 4 amperes and, finally, immediate cardiac arrest at over 4 amperes. These injuries occur when employees contact electrically energized parts. Typically, the frame of a tool becomes accidentally energized because of an electrical fault that provides a conductive path to the tool casing. When the employee contacts the tool casing, the fault current flows through the employee to ground. The amount of current that flows through an employee depends, primarily, upon the resistance of the fault within the tool, the resistance of the employee, and the resistance of the path from the employee back to the electric power supply. Moisture in the atmosphere can contribute to the electrical fault by intensifying both the conductive path within the tool and the external path back to the electric power supply. Dry skin can have a resistance range of about 500 to 500,000 ohms and wet skin can have a resistance range of about 200 to 20,000, depending on several factors, such as the weight of the employee. Thus, more current will flow if the employee is perspiring or becomes wet because of environmental conditions.

One method of protection against injuries from electric shock is the ground-fault circuit interrupter (GFCI). This device continually monitors the current flow to and from electric equipment. If the current going out of the equipment differs by 0.005 amperes from the current returning, then the GFCI will deenergize the equipment within as little as 25 milliseconds, quickly enough to prevent electrocution.

GFCI requirements. Proposed § 1910.304(b)(4) would set new requirements for ground-fault circuit interrupter protection of receptacles and cord connectors used in general industry. As noted earlier, this provision would only apply to installations made after the effective date of the final rule. Paragraph (b)(4)(i) would require ground-fault circuit protection for 125-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms and on rooftops. Cord- and plug-connected equipment in these locations can get wet and expose employees to severe ground-fault hazards. The NFPA 70E Committee believes, and OSHA agrees, that using 125-volt, 15- and 20-ampere cord- and plug-connected equipment in these locations exposes employees to a risk of electrocution great enough to warrant the protection afforded by ground-fault circuit interrupters.

Paragraph (b)(4)(ii) would require ground-fault circuit interrupter protection for receptacles on temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment, or during similar activities. However, receptacles on a 2-wire, single-phase portable or vehicle-mounted generator rated not more than 5 kW would be permitted without ground-fault circuit-interrupter protection if the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces.

OSHA currently requires GFCI protection for 120-volt, 15- and 20-ampere temporary receptacle outlets used on construction sites (§ 1926.404(b)(1)). In the 26 years that this requirement has been in effect, the Agency estimates that between 500 and 750 lives have been saved because of it.[15] Temporary wiring associated with construction-like activities exposes employees to the same ground-fault hazards as those associated with temporary receptacle outlets on construction sites. In § 1910.304(b)(4)(ii), OSHA is proposing to extend this requirement to temporary receptacles used in construction-like activity performed in general industry. The proposal would extend protection to receptacles of higher voltage and current ratings. This will better protect employees from ground-fault hazards than the construction rule because it covers other equipment that is just as subject to damage as 120-volt, 15- and 20-ampere equipment and that is more prevalent today than when the construction rule was promulgated.

The Agency is not proposing to permit the NFPA 70E assured grounding program as an alternative to GFCIs in general industry and maritime employment. NFPA 70E's assured grounding program differs in several important respects from the assured grounding program in OSHA's construction standards. For example, NFPA 70E permits the assured grounding program as an alternative to GFCIs only (1) for industrial establishments with conditions of maintenance and supervision that ensure that only qualified personnel are involved and (2) for receptacle outlets rated other than 125 volts and 15, 20, or 30 amperes. The OSHA construction rule recognizes the assured grounding

[15] In the preamble to the final rule adopting a requirement for GFCIs on construction sites, OSHA estimated that there were between 30 and 45 deaths per year caused by 120-volt ground faults on construction sites, and the Agency determined that nearly all of those deaths could be prevented by the use of GFCIs or an assured grounding program (41 FR 55701). OSHA fatality investigation data indicate that only 46 deaths involving 120-volt ground-faults in temporary wiring occurred over the years 1990 to 1996 (the latest year for which data are complete). This is a death rate of only 6.6 per year. Thus, OSHA believes that the rule has saved between 24 and 39 lives per year or, over the 25 years the rule has been in effect, a total of between 600 and 975 lives.

program as an alternative to GFCIs without restriction. Additionally, under the assured grounding program, NFPA 70E requires electric equipment to be tested only when there is evidence of damage. This is in contrast to the assured grounding program required by OSHA's construction standard, which requires electric equipment to be tested after any incident that can reasonably be suspected to have caused damage. OSHA believes that these differences would be confusing for employers who are subject to both standards and would offer less protection for employees.

OSHA also considered including the assured grounding program requirements from the construction standard as an alternative to GFCIs in this proposed rule. However, the Agency believes that GFCIs alone, without the assured grounding program as an alternative will provide better protection for employees. The construction standard's assured grounding program demands constant vigilance on the part of employees to provide them with the same level of protection as GFCIs. Under that program, employers must test cord- and plug-connected equipment generally at 3-month intervals, and employees must inspect them daily. In contrast, GFCIs constantly monitor the circuit for ground faults and open the circuit when ground-fault current becomes excessive without the need for either the employer or the employee to take. Considering that three fourths of all electrical accidents are caused by poor work practices (55 FR 31986), OSHA believes that GFCIs are a much more reliable method of protecting employees.

For these reasons, OSHA believes that this proposal would afford better protection for employees than NFPA 70E. However, OSHA requests comments on whether the assured grounding program required by the electrical standards for construction in § 1926.404(b)(1)(iii) provides equal or better protection for employees than GFCIs, and whether it should be added as an alternative to GFCIs in the general industry electrical installation standard.

E. Carnivals, Circuses, Fairs, and Similar Events

The proposed standard has new requirements for carnivals, circuses, exhibitions, fairs, traveling attractions, and similar events. These requirements, which are based on corresponding requirements in NFPA 70E, would cover the installation of portable wiring and equipment for these temporary attractions. From 1991 to 2002, OSHA received reports of 46 serious accidents [16] associated with carnivals, circuses, exhibitions, fairs, and similar events. Eleven of these accidents, resulting in 10 fatalities and 5 injuries, involved electric shock. Eight of those 11 cases (8 fatalities and 1 injury) involved electric wiring and equipment covered by the installation requirements in Subpart S. OSHA believes that the new electrical requirements for these events will prevent similar accidents in the future.

In paragraph (k) of § 1910.306, mechanical protection of electric equipment and wiring methods would be required in and around rides, concessions, or other units subject to physical damage. Inside tents and concession stands, the electrical wiring for temporary lighting would need to be secured and protected from physical damage. These new provisions would provide more electrical safety for employees working in and around this equipment.

The disconnecting means would need to be readily accessible to the operator; that is, the fused disconnect switch or circuit breaker would have to be located within sight and within 6 feet of the operator for concession stands and rides. This provision would provide protection by enabling the operator to stop the equipment in an emergency. The disconnecting means would also have to be lockable if it is exposed to unqualified persons, to prevent such persons from operating it.

F. Zone Classification

Introduction. Section 1910.307 contains OSHA's electrical safety requirements for locations that can be hazardous because of the presence of flammable or combustible substances. Hazardous locations are currently classified according to the properties of flammable vapors, liquids or gases, or combustible dusts or fibers that may be present. These locations are designated in the NEC and § 1910.307 as one of six types: Class I, Division 1; Class I, Division 2; Class II, Division 1; Class II, Division 2; Class III, Division 1; and Class III, Division 2. This system is called the "division classification system," or the "division system." The NEC first addressed this system in 1920. The OSHA website has a short but informative paper on this topic, which is available at *http://www.osha.gov/doc/outreachtraining/htmlfiles/hazloc.html.*

The latest version of NFPA 70E incorporates an alternative system (in addition to the division classification system) for installing electric equipment in Class I locations. (Class II locations continue under the division system.) This system is called the "zone classification system," or the "zone system." The zone system designates three classifications: Class I, Zone 0; Class I, Zone 1; and Class I, Zone 2. The zone system is based on various European standards that were developed by the International Electrotechnical Commission (IEC).[17] A modified version of this system was first adopted into the NEC in the 1996 edition. Although the zone and division classification systems differ in concept, individual equipment can be approved for use under both systems when the equipment incorporates protective techniques for both systems (as determined by the nationally recognized testing laboratory that lists or labels the equipment).

The zone system is an alternative method to the division system; employers may use either system for installations of electric equipment in Class I hazardous locations. OSHA proposes to permit the use of the zone system under § 1910.307 and any other OSHA standard that references § 1910.307.

As noted earlier, OSHA is proposing in § 1910.307(b) to require employers to document the designation of hazardous locations within their facilities. The documentation must denote the boundaries of each division or zone so that employees who install, inspect, maintain, or operate equipment in these areas will be able to determine whether the equipment is safe for the location. As noted earlier, OSHA is proposing to require documentation for the division system only for new installations that use that system. It would apply to all installations made under the zone system.

Proposed changes to OSHA's existing requirements for the division classification system. The term "hazardous concentrations" is currently used in various definitions of specific hazardous locations in § 1910.399. For example, § 1910.399 defines "Class I, Division 1," in part, as follows:

> A Class I, Division 1 location is a location: (a) in which hazardous concentrations of flammable gases or vapors may exist under normal operating conditions * * *

The proposal would change the term "hazardous concentrations" to "ignitable concentrations" in each of the

[16] These accidents were investigated by OSHA generally in response to employer reports of a fatality or three or more hospitalized injuries.

[17] The IEC prepares and publishes international standards for all electrical, electronic and related technologies. This global organization is made up of members from more than 60 participating countries, including the U.S.

definitions. This change would reflect changes already incorporated into the 1999 NEC and the 2000 edition of NFPA 70E to make the definition more specific about the hazard being addressed. The changes will make these definitions clearer in addition to making the OSHA standard consistent with the latest editions of NEC and NFPA 70E.

OSHA is also proposing to add a new paragraph (f) to § 1910.307 that sets acceptable protection techniques under the division system. These requirements address design features that must be used to protect employees who are using equipment in a hazardous location classified under the division system. Neither the current Subpart S nor NFPA 70E explicitly require specific protection techniques that may be used in the division classification system; however, the NEC does require specific protection techniques for installations made under the division classification system in various requirements spread throughout the Articles covering hazardous locations. OSHA has listed these techniques in one paragraph in the proposal to make the standard easier to use and to provide parallel requirements for both the division classification system and the zone classification system. Protective techniques other than those listed in paragraph (f) are acceptable if the equipment is: (1) Intrinsically safe as specified in § 1910.307(c)(1); approved for the specific hazardous location as specified in § 1910.307(c)(2); or (3) of a type and design that the employer demonstrates is safe for the specific hazardous location as specified in § 1910.307(c)(3). New paragraph (f) is intended to clarify the existing OSHA requirements for hazardous locations by explicitly listing the types of protective techniques used under the division classification system. (The protection techniques are required implicitly under the existing standard through the requirements for approval and listing or labeling by a nationally recognized testing laboratory and through the reference to the National Electrical Code in the note following § 1910.307(b)(3).)

Brief background and description of the zone system. The zone system stemmed from the independent efforts of countries in Europe and elsewhere to develop an area classification system to address safety in locations containing hazardous substances. The IEC formalized these efforts into the zone system, which is now used to classify the majority of the world's hazardous location systems.[18]

Article 505 of the 1996 NEC included requirements for the U.S. version of the zone system for the first time. The current version of NFPA 70E (NFPA 70E–2000) includes requirements for the zone system based on the 1999 version of the NEC. OSHA is proposing to adopt zone system rules that are based on these NFPA 70E provisions. This will permit electric equipment approved for use in hazardous locations to be used in U.S. workplaces, under either the division or zone system.

Major differences between the division classification system and the zone classification system. The zone system can best be described by comparing it with the division system. Both systems characterize locations by the likelihood and circumstances under which flammable gases or vapors exist. The systems both define the types of gases or vapors that may exist and categorize them under a number of groups. Each system specifies an allowable range of operating temperature, and corresponding requirements, for electric equipment used in a particular division or zone.

In contrast to the division system, however, the zone system is only used to classify areas that are hazardous because of the presence of flammable gases or vapors (Class I locations). The division system must be used to classify areas that may contain combustible dusts or easily ignitable fibers or flyings (Class II and III locations, respectively).

The zone system defines three types of Class I locations (Zones 0, 1, and 2) rather than two locations under the division system (Divisions 1 and 2). Zones 0 and 1 equate to Division 1, whereas Zone 2 equates to Division 2. In a Class I, Division 1 location, flammable gases or vapors are or may be present in the air in ignitable concentrations. In a Class I, Zone 1 location, ignitable concentrations of flammable gases or vapors are not always present, but such concentrations may exist periodically even under normal conditions. By contrast, in a Class I, Zone 0 location, such gases or vapors are present either continuously or for long periods of time. (See Table 2.) Thus, a Class I, Zone 0 location is, in essence, a worst-case Class I, Division 1 location.

Each system classifies flammable gases and vapors into a number of groups. The division system has four such groups, designated A, B, C, and D, with group A containing the most volatile substances, and groups B, C, and D containing gases or vapors that are progressively less volatile. The zone system has three such groups, designated IIA, IIB, and IIC, with group IIC containing the most volatile gases, and groups IIA and IIB containing gases or vapors that are progressively less volatile. Substances classified under Groups A and B in the division system generally fall under Group IIC of the zone system. However, some differences exist between the groups in the two systems. Thus, regardless of the classification system being used, equipment intended for use in a Class I hazardous location must indicate the groups for which it is approved, as required by proposed § 1910.307(c)(2)(ii) and (g)(5)(ii). Table 2 summarizes the similarities and differences between the two systems.

The other major differences concern the allowable protection schemes and the maximum allowable surface temperature of equipment under each system. The protection schemes acceptable for each division and zone are listed in Table 3, and the remainder of this paragraph discusses the differences in maximum allowable temperature. According to the NEC, equipment is acceptable for a hazardous location only if its surface temperatures will not approach the ignition temperature, or more specifically the autoignition temperature, of the particular gases and vapors that might be present in that location. There are 14 temperature limits, and corresponding identification codes, under the division system. Each limit specifies the maximum surface temperature for equipment labeled with the matching code. There are six such temperature limits and corresponding identification codes under the zone system. The six zone system limits correspond directly to 6 of the 14 division system temperature limits. However, as shown in Table 2, the remaining eight division temperature limits have values intermediate to the six zone system temperature limits. For example, the division system has 4 intermediate temperature limits, 215°C, 230°C, 260°C, and 280°C (T2D, T2C, T2B, and T2A, respectively), between the zone system's temperature limits of 200°C (T3) and 300°C (T2). Equipment approved for one of these intermediate values may be used under the zone system only for the higher (in temperature) of the two closest zone system values. For example, equipment marked T2A under the division system, which has a maximum surface temperature of 280°C,

[18] Brenon, M., Kelly, P., McManama, K., Klausmeyer, U., Shao, W., Smith, P., "The Impact of the IECEx Scheme on the Global Availability of Explosion Protected Apparatus," *Record of Conference Papers of the 1999 Petroleum and Chemical Industry Technical Conference*, September 13–15, 1999, Paper No. PCIC–99–07, pp. 99–109.

could only be used in locations where the ignition temperature of the substance is greater than or equal to the T2 value, which is 300°C. In essence, T2A equipment becomes derated to T2 equipment when it is installed using the zone classification system. It could not be used in zone-classified locations where the ignition temperature of the substance is less than or equal to the T3 value, which is 200°C, because the equipment could become hot enough to cause ignition.

More details on the differences in gas groups. In the 1999 NEC, the definitions for each of the division system gas and vapor groups, except Group A,[19] were changed to make them comparable to the definitions of the zone system groups. A gas or vapor is classified in the division system's Group B, C, or D or the zone systems Group IIC, IIB, or IIA based on the gas's or vapor's maximum experimental safe gap (MESG)[20] or its minimum igniting current ratio (MIC ratio).[21] These values are established under standard experimental conditions for each gas and vapor.

The 1999 NEC indicates two factors that may affect MESG and MIC values: (1) Lower ambient temperatures (lower than minus 25°C or minus 13°F), and (2) oxygen enriched atmospheres. The 1999 NEC Handbook states that the latter factor can drastically change the explosion characteristics of materials. Such an atmosphere lowers the minimum ignition energy, increases the explosion pressure, and can reduce the maximum experimental safe gap. These factors would make it unsafe to use otherwise approved "intrinsically safe" and "explosion-proof" equipment, unless the equipment has been tested for the specific conditions involved. Employers must ensure that the equipment approval is valid for the actual conditions present where the equipment is installed. This is required generally for all electric equipment. However, it is essential in hazardous locations because of the dire consequences that may result.

Rationale for adopting the zone system requirements. As stated earlier, the zone system has been accepted in many countries. Such international acceptance has meant that U.S. manufacturers of electric equipment suitable for installation in hazardous locations have had to ensure that their equipment met the zone system requirements if they wished to sell such equipment in zone-system countries in addition to meeting the U.S. division system requirements. Also, U.S. employers that had hazardous locations in their workplaces have sought to use equipment approved for use only in zone-classified locations in this country. This, in turn, led NFPA to incorporate the zone system in the NEC starting in the 1996 edition.

OSHA has determined that employees can be protected from the hazards of explosion in Class I hazardous locations by the installation of electric equipment following the latest NEC requirements for the zone classification system (Article 505 of the 2002 NEC). Therefore, the Agency is incorporating the zone system in this proposed revision of the electrical installation requirements in Subpart S. Under the proposed standard, employers would be able to comply with either the zone classification system or the division system for Class 1 hazardous locations.

New § 1910.307(g) and related definitions. OSHA is proposing to add a new paragraph (g) to § 1910.307 to cover the zone classification system. This new paragraph addresses the following topics: scope; location and general requirements; protection techniques; special precaution; and listing and marking. A brief description of the contents of each paragraph follows.

Paragraph (g)(1) permits employers to use the zone classification system as an alternative to the division classification system. This paragraph also explains that the requirements in § 1910.307 that are specific to installations built under the division classification do not apply to installations built under the zone classification system. Thus, paragraph (c), electrical installations; paragraph (d), conduits; paragraph (e), equipment in Division 2 locations; and paragraph (f), protection techniques do not apply to installations built under the zone system. Paragraph (g) contains counterparts to each of these requirements.

Paragraphs (g)(2)(i) and (ii) describe how hazardous locations are classified under the zone system. The employer must consider each individual room, section, or area separately and must designate locations according to the specific properties of the flammable gases, liquids, or vapors that might be present. The same requirements apply to the division system. (See § 1910.307(a).)

Paragraphs (g)(2)(iii) and (g)(2)(iv) require that conduit threads be of certain types and that connections be made wrench tight. These provisions ensure that there is no arcing across conduit connections in the event that they have to carry fault current. Paragraph (d) contains similar requirements for division system installations.

Paragraph (g)(3) presents the protection techniques that are acceptable in zone-classified hazardous locations. Electric equipment in these locations must incorporate at least one of these protection techniques, and the equipment must be approved for the specific hazardous location. The protection techniques listed in the proposal have been taken directly from NFPA 70E–2000.

Paragraph (g)(4) sets special precautions that must be taken with respect to hazardous locations classified under the zone system. First, the classification of areas and the selection of equipment and wiring must be under the supervision of a qualified professional engineer. This provision is contained in NFPA 70E–2000 and in the 1999 NEC. Because the zone system has been permitted in the U.S. only since 1997,[22] employers and installers in this country have relatively little experience with installations made using the zone classification system. The experts that developed NFPA 70E and the NEC have determined that, for the zone system, it is essential for competent persons to classify the hazardous locations and select equipment for those locations. OSHA agrees with these experts. Paragraph (g)(4) also indicates when it is safe to have locations classified using the division system on the same premises as locations classified under the zone system and vice versa. These provisions are also taken from NFPA 70E–2000.

Paragraph (g)(5) contains requirements for marking equipment that is approved for hazardous locations classified under the zone system. These provisions are comparable to the corresponding marking requirements under the division system, but reflect the need to provide information

[19] Acetylene is the only Group A gas under the division system.

[20] The MESG is the maximum clearance between two parallel metal surfaces that has been found, under specified test conditions, to prevent an explosion in a test chamber from being propagated to a secondary chamber containing the same gas or vapor at the same concentration.

[21] The MIC ratio is the ratio of the minimum current required from an inductive spark discharge to ignite the most easily ignitable mixture of a gas or vapor, divided by the minimum current required from an inductive spark discharge to ignite methane under the same test conditions.

[22] As noted earlier, the zone system was first incorporated into the NEC in the 1996 edition. This edition was adopted by various governmental jurisdictions beginning in 1997. Installations made using the zone system were not permitted by these jurisdictions before then. In addition, the existing OSHA standard does not permit classifying hazardous locations under the zone system, and employers have not been certain that installations made using the zone classification systems would be acceptable to OSHA.

necessary for safely installing equipment in a zone-classified location.

Equivalence of systems and permitted protection techniques. Table 2 shows the general equivalence between the two classification systems. It should be noted, however, that a given area classified under one system is not permitted to overlap an area classified under the other system. For example, although Division 2 and Zone 2 are basically equivalent classifications, under the proposed standard a Zone 2 location is permitted to touch a Division 2 location, but the two locations are not permitted to overlap. This ensures that equipment installed and maintenance performed in these locations are appropriate for the conditions in each location.[23]

TABLE 2.—EQUIVALENCE OF HAZARDOUS (CLASSIFIED) LOCATION SYSTEMS, CLASS I LOCATIONS ONLY [1 2]

Category	Division system	Zone system
Locations	Division 1	Zone 0, Zone 1.
	Division 2	Zone 2.
Gas Groups (see Table 3 since systems are not fully equivalent).	A, B	IIC (not fully equivalent to Groups A and B).
	C	IIB (not fully equivalent to Group C).
	D	IIA (not fully equivalent to Group D).
Temperature Codes	T1 (≤450°C)	T1 (≤450°C).
	T2 (≤300°C)	T2 (≤300°C).
	T2A, T2B, T2C, T2D (≤280, ≤260, ≤230, ≤215°C).	T2 (effectively).[3]
	T3 (≤200°C)	T3 (≤200°C).
	T3A, T3B, T3C (≤180, ≤165, ≤160°C)	T3 (effectively).[3]
	T4 (≤135°C)	T4 (≤135°C).
	T4A (≤120°C)	T4 (effectively).[3]
	T5 (≤100°C)	T5 (≤100°C).
	T6 (≤85°C)	T6 (≤85°C).

Notes to Table 2:
[1] Use of the equivalence shown in the table above must be done only as permitted by § 1910.307.
[2] The zone classification system described in this preamble does not cover Class II or Class III locations.
[3] See the discussion of maximum allowable surface temperatures earlier in the preamble.

Table 3 describes which protection techniques may be used in which classified locations.

TABLE 3.—PERMITTED PROTECTION TECHNIQUES (DESIGN CRITERIA) IN CLASS I LOCATIONS

Division 1: —explosion-proof —purged and pressurized (Type X or Y) —intrinsically safe	Zone 0: —intrinsically safe "ia" —Class I, Division 1 intrinsically safe Zone 1: —flameproof "d" —purged and pressurized —intrinsically safe "ib" —oil immersion "o" —increased safety "e" —encapsulation "m" —powder filling "q" —any Class I, Division 1 method —any Class I, Zone 0 method
Division 2: —purged and pressurized (Type Z) —intrinsically safe —nonincendive —oil immersion —hermetically sealed —any Class I, Division 1 method —any Class I, Zone 0, Zone 1, or Zone 2 method	Zone 2: —non-sparking "nA" —protected sparking "nC" —restricted breathing "nR" —any Class I, Division 1 or 2 method —any Class I, Zone 0 or 1 method

Listing and labeling by NRTLs. Paragraph (a) of proposed § 1910.303 would continue the existing requirement that all electric equipment be approved. While OSHA believes that approval is necessary for all electric equipment, the need for third-party approval of electric equipment in hazardous locations is crucial in most circumstances. The techniques for ensuring safety in hazardous locations require careful manufacturing and testing of products because tolerances are tight and the margin for error is slim. Thus, OSHA's general industry

[23] Division 2 and Zone 2 are basically equivalent classifications, but there are some differences in what types of equipment are acceptable in each of those locations. See, for example, the earlier discussion on maximum allowable surface temperatures.

electrical installation standard has always called for equipment approval, which generally requires listing or labeling by a nationally recognized testing laboratory (NRTL) of equipment installed in hazardous locations.[24] Under 29 CFR 1910.7, OSHA recognizes testing organizations that are capable of performing third-party testing for safety and designates them as NRTLs. Employers may use products listed by NRTLs to meet OSHA standards that require testing and certification. NRTLs test and certify equipment to demonstrate conformance to appropriate test standards. Many of these test standards cover equipment used in hazardous locations.

OSHA's existing requirements for hazardous locations in Subpart S only address locations classified under the division system, and NRTLs perform testing based on that system. However, test standards currently used by NRTLs to test equipment in hazardous locations classified by division are not automatically appropriate for testing such equipment for use under the zone system. These current test standards are based on protective techniques used for equipment designed for use under the division system and do not contain criteria for protective techniques used in the zone system. Electric equipment that has been approved by a NRTL for use in division-classified hazardous locations may be capable of igniting flammable gases or vapors when used inappropriately in zone-classified locations. Such hazardous equipment can cause a catastrophic explosion and the deaths of and injuries to many employees. In recognizing laboratories under § 1910.7 to test products designed for installation in zone-classified locations, OSHA will ensure that the proper test standards are used and look closely at the capability of the laboratory to perform testing under those standards.

Effects and changes to other Part 1910 standards (§§ 1910.103, 1910.106, 1910.107, 1910.110, 1910.178, and 1910.253). A number of other OSHA standards under 29 CFR Part 1910 contain references to or requirements related to § 1910.307. Some of these standards refer only to hazardous locations classified under the division system. The standards particularly affected are as follows:

§ 1910.103(b)(3)(ii)(*e*) and (b)(3)(iii)(*e*), (c)(1)(ix)(*a*), and (c)(1)(ix)(*b*);

§ 1910.106(d)(4)(iii), (e)(7)(i)(*b*), (e)(7)(i)(*c*), (e)(7)(i)(*d*), (g)(1)(i)(*g*), (g)(4)(iii)(*a*), (h)(7)(iii)(*b*), and (h)(7)(iii)(*c*);

§ 1910.107(c)(6), (c)(8), (j)(4)(iv);

§ 1910.110(b)(17)(v);

§ 1910.178(c)(2)(iv) and (q)(2); and

§ 1910.253(f)(4)(iv)(B) and (f)(6)(v).

OSHA is not proposing to modify any of these standards in this rulemaking. Several of these requirements call for designating particular locations as Class I, Division 1 or Division 2 locations, and OSHA does not believe that revising them would be a straightforward or transparent process. For example, § 1910.103(c)(1)(ix)(*a*) requires electric wiring and equipment "located within 3 feet of a point where connections are regularly made and disconnected, shall be in accordance with subpart S of this part, for Class I, Group B, Division 1 locations." Under the zone system this location would likely be partly a Zone 0 location and partly a Zone 1 location. Thus, this requirement cannot be revised by a straightforward substitution of "Zone" for "Division." Similar problems exist in revising the other requirements. OSHA requests comments on whether these provisions should be modified to recognize installations made using the zone system and, if so, on what specific changes should be made to accomplish this.

G. Definitions

The definitions for Subpart S are located in § 1910.399. The proposed changes in these definitions reflect the provisions of the 1999 National Electrical Code and NFPA 70E–2000.

OSHA is proposing to remove several definitions from the standard. "Identified," as used in reference to a conductor or its terminal, would be removed because the proposal would discontinue the current standard's use of the word "identified" in this manner. The proposal does define "identified" to refer to equipment suitable for a specific purpose, function, use, environment, or application. "Special permission," "permanently installed swimming pools, wading and therapeutic pools," and "storable swimming and wading pools" would be removed because these terms are not used in Subpart S. Lastly, the definitions of "electric sign" and "may" would be removed. The existing Subpart S definitions of these terms are not substantially different from the commonly accepted dictionary definitions. Thus, their removal would not change the meaning of the standard.

OSHA is proposing to add fifteen definitions to § 1910.399. These definitions, all but one of which are based on NFPA 70E–2000, will help clarify the requirements in Subpart S. Other modifications made to the definitions are grammatical, and no substantive change is being made in the meaning of the terms. Table 4 summarizes the changes to the definitions.

TABLE 4.—SUMMARY OF CHANGES TO THE DEFINITIONS

Old definition	New definition	Rationale
	Barrier	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
	Bathroom	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
	Class I, Zone 0	OSHA would add this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.
	Class I, Zone 1	OSHA would add this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.

[24] Equipment that is of a type that no nationally recognized testing laboratory accepts as being safe can achieve approval through acceptance by a Federal, State, or local authority having jurisdiction over the safety of electrical installations. Custom-made equipment can gain approval through testing by the equipment manufacturer. However, these two modes of approval are rare for equipment installed in hazardous locations. Federal, State, and local authorities generally look to NRTLs for equipment approval, and this is even more true for equipment installed in hazardous locations. This type of equipment must be tested to ensure that it is safe, and these authorities generally do not have the capability to do electrical testing. Custom-made equipment, by its very nature, is very rare.

Existing § 1910.307(b) also recognizes equipment that is "safe for the hazardous (classified) location." This provision permits equipment that is approved for installation in nonhazardous locations if the employer demonstrates that the equipment will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers. This condition exists only in limited circumstances as demonstrated by the 2002 NEC, which permits only certain types of general-purpose equipment in hazardous locations and then only under limited conditions. For example, Section 501.8(B) of the 2002 NEC permits nonexplosionproof enclosed motors in Class I, Division 2 locations if they have no brushes, switching mechanisms, or similar arc-producing devices and if exposed motor surfaces do not exceed 80 percent of the ignition temperature of the gas or vapor involved.

TABLE 4.—SUMMARY OF CHANGES TO THE DEFINITIONS—Continued

Old definition	New definition	Rationale
	Class I, Zone 2	OSHA would add this definition to § 1910.399 from NFPA 70E–2000 to support the new section on Zone Classification in § 1910.307.
	Conductive	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
	Deenergized	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
Electric sign	[Removed]	No substantive change. The definition adds nothing to the dictionary definition of this term.
	Energized	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
Identified	Identified	This term is used in a different manner in the proposed revision. The new use and definition are taken from NFPA 70E–2000.
	Insulated	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
	Live parts	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
May	[Removed]	No substantive change. The definition adds nothing to the dictionary definition of this term.
	Motor Control Center	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
	Overhaul	OSHA would use this term in the standard in place of "major replacement, modification, repair, or rehabilitation," which is used in the existing standard to delineate when an electrical installation must meet new requirements in the standard. See the explanation of the definition and related changes under the summary and explanation of the grandfather clause earlier in this preamble.
Permanently installed swimming pools, wading and therapeutic pools.	[Removed]	This term is not used in Subpart S.
	Service Point	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
Special permission	[Removed]	This term is not used in Subpart S.
Storable swimming or wading pool.	[Removed]	This term is not used in Subpart S.
	Unqualified Person	OSHA would add this definition to § 1910.399 from NFPA 70E–2000.
Utilization system	[Removed]	This definition would be removed. The existing definition appears to conflict with the scope of Subpart S. See the detailed explanation earlier in this section of the preamble.

A few terms warrant additional explanation: "identified," "labeled," and "listed." The existing standard requires certain electric equipment to be "approved for the purpose," and current § 1910.399 defines this term as follows:

Approved for a specific purpose, environment, or application described in a particular standard requirement.

Suitability of equipment or materials for a specific purpose, environment or application may be determined by a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation as part of its listing and labeling program. (See "Labeled" or "Listed.")

In the proposal, OSHA is replacing the word "approved," when used in this sense, with "identified." The proposed definition of "identified," which is based on the definition of this term in NFPA 70E,[25] reads as follows:

Identified (as applied to equipment). Approved as suitable for the specific purpose, function, use, environment, application, and so forth, where described in a particular requirement.

Note to the definition of "identified:" Some examples of ways to determine suitability of equipment for a specific purpose, environment, or application include investigations by a nationally recognized testing laboratory (through listing and labeling), and inspection agency, or other organization recognized under the definition of "acceptable."

The proposed definition of "identified" as it applies to equipment is intended to be equivalent to the existing definition of "approved for the purpose." [26]

In the proposal, OSHA uses the terms "listed" and "labeled" to refer to electric equipment determined to be safe by a nationally recognized testing laboratory (NRTL). When equipment has been listed and labeled, this means that the equipment has been tested and found safe for use by a nationally recognized testing laboratory. The laboratories mark the equipment with a symbol identifying their trademark. The equipment is then considered by OSHA to be safe for its intended use. If the equipment is altered or used for other purposes, then the equipment is not acceptable under Subpart S. The laboratories typically require the equipment to be marked with such information as: the standards under which the equipment has been tested; the current rating in amperes; and the frequency. OSHA evaluates and recognizes "nationally recognized testing laboratories" under § 1910.7 to test equipment for safety and label or list it. It should be noted that the proposed rule would continue the existing § 1910.399 definitions of "labeled" and "listed" without substantive change.

H. Appendices

Appendices B and C of current Subpart S contain no material; they are reserved for future use. OSHA is proposing to remove these "empty" appendices because neither the Agency nor NFPA 70E currently have material to include there. NFPA 70E does have substantial appendix material relating to safety-related work practices, but not installations, in Part II of that standard. OSHA will consider whether to include or use the NFPA 70E appendices when the Agency revises its electrical safety-

[25] Except for the note to the definition, the exact language was taken from the 2002 NEC. This version is clearer than the definition in NFPA 70E, but the intent is the same. OSHA has clarified the note to indicate that acceptability of testing and inspection agencies is given in the definition of "acceptable."

[26] NFPA 70E uses the word "recognizable" in lieu of "approved" in the definition of "identified." It also contains a fine print note following the definition indicating that suitability of equipment for a specific purpose, environment, or application may be determined by a qualified testing laboratory, inspection agency, or other organization concerned with product evaluation. The proposed and existing OSHA standards both require all electric equipment to be approved, and this approval is the only mechanism for recognizing equipment as suitable. The Agency believes that the proposed definition of "identified" as applied to equipment clarifies the intent of the standard and is consistent with the existing standard's provisions that require electric equipment to be "approved for the purpose."

related work practices standard (§§ 1910.331 through 1910.335) in the future.

Existing Appendix A contains a list of references. OSHA is proposing to revise and update the references in this appendix to reflect the most recent editions of various national consensus standards. These nonmandatory references can assist employers who desire additional information that will help them to comply with the performance standard in Subpart S. For example, if an employer complies with the detailed specifications of the 1999 National Electrical Code, the employer will be considered as being in compliance with the more performance-oriented requirements found in Subpart S. In addition, OSHA is proposing to remove various reference standards from the appendix because the documents are no longer in print and because the information can be found in other listed sources. The references that would be removed are:

ANSI B9.1–71 Safety Code for Mechanical Refrigeration;

ANSI B30.7–77 Base Mounted Drum Hoists;

ANSI B30.15–73 Safety Code for Mobile Hydraulic Cranes;

ANSI C33.27–74 Safety Standard for Outlet Boxes Fittings for Use in Hazardous Locations, Class I, Groups A, B, C, and D, and Class II, Groups E, F, and G;

ASTM D2155–66 Test Method for Autoignition Temperature of Liquid Petroleum Products;

IEEE 463–77 Standard for Electrical Safety Practices in Electrolytic Cell Line Working Zones;

NFPA 56A–73 Standard for the Use of Inhalation Anesthetics (Flammable Nonflammable);

NFPA 56F–74 Standard for Nonflammable Medical Gas Systems;

NFPA 70C–74 Hazardous Locations Classification;

NFPA 71–77 Standard for the Installation, Maintenance, and Use of Central Station Signaling Systems;

NFPA 72A–75 Standard for the Installation, Maintenance, and Use of Local Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service;

NFPA 72B–75 Standard for the Installation, Maintenance, and Use of Auxiliary Protective Signaling Systems for Fire Alarms Service;

NFPA 72C–75 Standards for Installation, Maintenance, and Use of Remote Station Protective Signaling Systems;

NFPA 72D–75 Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchman, Fire Alarm, and Supervisory Service;

NFPA 72E–74 Standard for Automatic Fire Detectors;

NFPA 74–75 Standard for Installation, Maintenance, and Use of Household Fire Warning Equipment;

NFPA 76A–73 Standard for Essential Electrical Systems for Health Care Facilities;

NFPA 86A–73 Standard for Ovens and Furnaces; Design, Location and Equipment;

NFPA 88B–73 Standard for Repair Garages;

NFPA 325M–69 Fire-Hazard Properties of Flammable Liquids, Gases, and Volatile Solids; and

NFPA 493–75 Standard for Intrinsically Safe Apparatus for Use in Class I Hazardous Locations and Its Associated Apparatus.

OSHA is proposing to add five national consensus standards to the list. All of these documents refer to hazardous (classified) locations.

ANSI/UL 913–2002 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations;

ANSI/UL 2279–1997 Electrical Equipment for Use in Class I, Zone 0, 1 and 2 Hazardous (Classified) Locations;

ANSI/API RP 500–1998 (2002) Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I Division 1 and Division 2;

ANSI/API RP 505–1998 (2002) Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2; and

NFPA 820–1999 Standard for Fire Protection in Wastewater Treatment and Collection Facilities.

I. Powered Platforms for Building Maintenance

Mandatory Appendix D to § 1910.66, powered platforms for building maintenance, applies to powered platforms installed between August 28, 1971, and July 23, 1990. Paragraphs (c)(22)(i) and (c)(22)(vii) in that appendix incorporate the 1971 National Electrical Code by reference. OSHA is proposing to reference Subpart S instead. The proposal, which would replace the highly specification-oriented NEC with the performance-oriented Subpart S, would make the standard more flexible for employers maintaining these platforms but would retain the protection currently afforded employees.[27] In addition, employers would no longer need to refer to the NEC to determine how to comply with OSHA's standard for powered platforms. The Agency requests comments on whether replacing the reference to the NEC with one to Subpart S is reasonable and appropriate.

VI. Preliminary Economic and Regulatory Screening Analysis

A. Existing Versus Proposed Standard

The proposed rule would revise and update the provisions contained in Sections 1910.302–1910.308 and 1910.399 of the existing Subpart S electrical installation standard. The original version of Subpart S, adopted under section 6(a) of the OSH Act, incorporated the 1971 National Electrical Code (NEC) by reference. In 1981, OSHA replaced the incorporation by reference with updated provisions based on the 1979 National Fire Protection Association (NFPA) 70E committee recommendations. The 1981 version relied on the 1978 NEC. The proposed rulemaking will revise and update the OSHA electrical installation standard to be consistent with most of the NFPA 70E recommendations developed in 2000, which are based on the 1999 NEC, and to update requirements for new electrical installations.

OSHA has conducted a detailed comparison of the existing and proposed rules in order to determine which provisions are expected to increase compliance costs. Table 5 summarizes the changes associated with the provisions of the proposed rule and their implications for compliance costs. The OSHA comparative analysis indicates that the changes in the proposed rule fall into four categories: (1) Changes in hardware specifications that are consistent with NEC requirements; (2) changes in installation practices that are consistent with current, normal and customary installation practices routinely followed by licensed electricians; (3) clarifications of existing requirements that do not add additional obligations and/or allow greater flexibility for achieving compliance; and (4) requirements that may require significant changes in electrical system and equipment installation practices.

The first three categories of changes introduced by the proposed standard are

[27] Employers who make minor modifications to these platforms would thus be required to follow Subpart S rather than the 1971 NEC. Newer installations and major modifications of older platforms are already required to meet Subpart S with respect to the platform's electrical wiring and equipment.

not expected to result in any additional costs. Category 1 changes are not expected to increase costs because most equipment manufacturers routinely follow current NEC requirements regarding hardware specifications. Category 2 changes are not expected to result in any increase in compliance costs since most licensed electricians routinely follow NEC requirements for installing electrical systems and equipment. Category 3 changes do not add any new installation or work practice requirements, but simply restate or eliminate existing requirements.

Regarding Category 4, a number of changes indicated by the proposed rule correspond to revisions to the NEC made prior to 1999. Because these changes have been in the NEC since 1996,[28] they are believed to represent widespread current industry practice. Therefore, the changes are not expected to result in increased compliance costs. Moreover, construction requirements usually imposed by mortgage lenders and insurance carriers, as well as installation practices routinely followed by licensed electricians (given their formal training), are generally consistent with the NEC requirements. In sum, there is a subset of Category 4 changes that can be assumed to be equivalent to the Category 2 changes described above. Only those Category 4 changes that represent additions or revisions to the 1999 NEC are expected to potentially result in any increase in compliance costs.

As noted, many Category 4 changes are not expected to increase compliance costs. In order to avoid having employers incur the costs of retrofitting the existing electrical systems and equipment in their buildings and facilities, OSHA has identified (in § 1910.302(b)(4)) the substantive new provisions in the proposed standard, and then excluded (grandfathered) all existing electrical systems and equipment installations from having to comply with these new requirements. These provisions will only apply to new installations (that is, electrical systems and equipment installed for the first time, as well as installations that represent a major replacement, modification, repair, or rehabilitation of an existing electrical system) made after the effective date of the standard. Of the new provisions identified in § 1910.302(b)(4), there are 14 provisions (or sets of related provisions) in Category 4 that were added or last revised in the 1999 NEC. A number of these provisions represent changes in design and/or operating practices. OSHA believes that with the appropriate lead time (that is, sufficient delay in the effective date of the proposed standard), these provisions should not result in any incremental costs because these requirements can be reviewed and considered, and the electrical installation practices altered as necessary, prior to any work being performed.

In addition to the provisions identified in § 1910.302(b)(4), there are also new provisions identified in § 1910.302(b)(2) and (b)(3) of the proposed standard that apply to: (1) Electrical system and equipment installations (either first time or major replacement, modification, repair, or rehabilitation) made after March 15, 1972; and (2) electrical system and equipment installations (either first time or major replacement, modification, repair, or rehabilitation) made after April 16, 1981, respectively. Reviewing the provisions identified in § 1910.302(b)(2) and (b)(3) of the proposed rule, there are 12 new provisions (or sets of related provisions) in Category 4 that were added or last revised in the 1999 NEC. Table 5 lists the provisions with cost implications. Again, a number of these provisions represent changes in design or operating practice rather than new equipment requirements, and as discussed earlier, are not expected to result in any incremental costs as long as there is sufficient delay in the effective date of the proposed standard.

OSHA has examined other new provisions for possible cost impacts. First, § 1910.302(b)(1) of the existing and proposed standards identifies those provisions (that is, specific sections in the standards) that all new and existing electrical system and equipment installations must meet regardless of the installation date. For these provisions in the existing and proposed standards, there is no grandfathering of older, existing electrical system and equipment installations. However, OSHA has concluded that proposed § 1910.302(b)(1) imposes no new, substantive Category 4 requirements for existing electrical systems and equipment installations. Further, while § 1910.302(b)(1) does add new coverage from § 1910.307, only documentation of hazardous locations is a totally new requirement. The rest of the new provisions in § 1910.307 allow employers to continue using the division system or to implement an alternative zone system for classifying hazardous locations containing flammable gases or vapors. They should not result in any additional costs unless employers voluntarily choose to abandon their present division system in favor of the alternative zone system. Finally, there are new proposed provisions not contained in the existing OSHA electrical installation standard that were originally in the 1971 NEC and were enforced by OSHA between March 15, 1972, and April 16, 1981. The latest version of NFPA 70E reincorporated these provisions. OSHA believes that these provisions represent widespread current industry practices, because they have been part of every version of the NEC since 1971, including the 1999 and 2002 editions, and will not impose any additional cost.

B. Potentially Affected Establishments

The proposed electrical safety standard is based primarily upon the 2000 NFPA 70E recommendations, which in turn, are based on the 1999 NEC. Consequently, companies that are installing electrical systems and equipment in their facilities in locations where the 1999 (or 2002) NEC is currently being followed will not be further impacted by OSHA's proposed rulemaking with respect to new installations. Further, given that there are no new, substantive Category 4 provisions in the proposed standard that are mandatory for all existing electrical system and equipment installations (see above discussion), these provisions will not result in any economic impact for existing installations, until they are replaced, repaired, and/or renovated.

In order to estimate the number of employers potentially impacted by the proposed rulemaking, OSHA has identified the States and municipalities that currently mandate the 1999 (or 2002) National Electrical Code (NEC), that currently mandate using an earlier NEC, or that have no mandated statewide electrical code pertaining to new installations.[29] These states were identified using information contained in the *Directory of Building Codes and Regulations, by City and State* (National Conference of States on Building Codes and Standards, NCSBCS, 2002). In sum, 34 of the 50 States have already passed mandatory minimum building or fire codes specifying that new construction (including new electrical installations) must meet or exceed the requirements of

[28] The 1996 version of the NEC preceded the 1999 version.

[29] In States with no mandated electrical code pertaining to new installations, OSHA's existing standards, which are primarily based on the 1971 and 1978 NECs, are the governing regulations. (In State Plan States, each State has adopted a standard that Federal OSHA has found to be at least as effective as the Federal standard. For all practical purposes, this means that OSHA's existing standard is the governing standard unless the State has adopted a more stringent standard.)

the 1999 (or 2002) National Electrical Code (NEC).[30] Thus, OSHA assumes that employers in the covered industries in all locations in these 38 States (except for Baltimore, MD) will be unaffected by OSHA's proposed rulemaking with respect to new installations. These States (with the particular NEC indicated) are listed below:

Alaska (1999)
Arkansas (1999)
California (1999)
Colorado (1999)
Connecticut (1999)
Delaware (1999)
Florida (1999)
Georgia (1999)
Idaho (2002)
Indiana (1999)
Kentucky (2002)
Maine (1999)
Maryland (1999)
Massachusetts (1999)
Michigan (1999)
Minnesota (1999)
Montana (1999)
Nebraska (2002)
New Hampshire (1999)
New Jersey (1999)
New Mexico (1999)
New York (1999)
North Carolina (1999)
North Dakota (2002)
Ohio (2002)
Oklahoma (1999)
Oregon (1999)
Pennsylvania (1999)
Rhode Island (2002)
South Carolina (1999)
South Dakota (2002)
Tennessee (1999)
Utah (1999)
Vermont (1999)
Washington (1999)
West Virginia (1999)
Wisconsin (1999)
Wyoming (1999)

Moreover, 16 large cities in other States have also adopted the 1999 NEC. Therefore, employers in the covered industries in these municipalities are also expected to be unaffected by OSHA's proposed rulemaking with respect to new installations. These cities are listed below:

Austin, Texas
Chicago, Illinois
Dallas, Texas
Des Moines, Iowa
El Paso, Texas
Forth Worth, Texas
Honolulu, Hawaii
Houston, Texas
Jackson, Mississippi
Kansas City, Missouri
Las Vegas, Nevada
Phoenix, Arizona
San Antonio, Texas
St. Louis, Missouri
Tucson, Arizona
Wichita, Kansas

Further, the State of Alabama has adopted a limited mandatory minimum code, which requires that a number of industries follow 1999 NEC. These industries include hotels, schools, and movie theaters. Therefore, in this analysis, these identified industries in Alabama have been included with the group of 38 States and 16 large cities (described above) that currently follow the 1999 NEC.

The remaining 12 States (or portions of these States) that would likely be affected by OSHA's proposed rulemaking can be separated into two subgroups: (1) States or municipal jurisdictions that have adopted the 1996 version of the NEC; and (2) States that have not adopted any statewide electrical code covering all non-government-owned buildings or facilities (that is, private sector installations). For group 1, it is likely that these jurisdictions will adopt a later version of the NEC at some point in the future. This will likely result in lower annual compliance costs than estimated below.

Five States and three cities fall into the first of the two subgroups described above. These include all locations in Louisiana and Virginia, as well as portions of Arizona, Iowa, and Nevada (that is, all locations in these three States excluding the four large cities in these States that have adopted the 1999 NEC, as indicated in the list above). The three large cities in the first subgroup include Baltimore MD, Birmingham AL (excluding hotels, schools, and movie theaters), and Washington DC. Employers in these locations may be affected to the extent that the 1999 NEC, which is the basis for the proposed rulemaking, differs from the 1996 NEC.

Many of the new provisions in the proposed rule, including those in Category 4 that have potential cost implications for new electrical systems and equipment installations, date back to the 1996 NEC or to an NEC prior to 1996. Thus, for these provisions, employers in locations now requiring that the 1996 NEC be followed, will not be affected by OSHA's proposed rulemaking with respect to new installations.

Seven States have not yet adopted any statewide electrical code that applies to all private sector employers. These States include: Alabama (excluding hotels, schools, and movie theaters), Hawaii, Illinois, Kansas, Mississippi, Missouri, and Texas. Employers in these States are expected to be the most affected (of the three subgroups) by OSHA's proposed rulemaking, since no Statewide electrical code is currently required. For these seven States, OSHA's existing electrical installation standard, which is primarily based on the 1971 and 1978 NECs, are the governing regulations.[31] Below the Statewide level, it is not clear to what extent local jurisdictions have passed local electrical ordinances that exceed the 1971 and 1978 NECs and are consistent with the 1999 NEC. While it is likely that some local jurisdictions within these states enforce the 1999 (or 2002) NEC, OSHA's analysis treats these States as though they are not in compliance with either the 1999 or 2002 NEC for purposes of analysis. As a consequence, the estimated compliance costs are likely to be overstated.

Using data from the U.S. Department of Commerce's 1997 County Business Patterns (CBP) database, OSHA has estimated the total number of affected establishments and employment in those establishments for the 58 two-digit SICs covered by general industry electrical safety installation standard.[32] In addition, the number of establishments and employment that are already subject to the 1999 NEC, the 1996 NEC, the 1990 NEC, and no statewide electrical code, are also estimated. For those cities (identified above) that are currently following a particular electrical code, OSHA has estimated the number of establishments and employment in these cities using, as a surrogate, the data for the county in which the cities are located.

The data indicate that there are an estimated 5.6 million establishments with 89.8 million employees in the industries covered by the general industry electrical safety installation standard. About 84.7 percent of the establishments, employing about 85.3 percent of the workers, are in States or cities that have adopted the 1999 (or 2002) NEC. Approximately 6.3 percent of both the establishments and employees are in States or cities that have adopted the 1996 NEC. The remaining approximately 9.0 percent of the establishments, employing about 8.4 percent of the workers, are in States

[30] Maryland has adopted the 1999 NEC as a Mandatory Minimum Code, exempting Baltimore from compliance. Generally when a state updates these mandatory minimum requirements, the new requirements apply only to new facilities or installations.

[31] Note that of these seven States, Hawaii is the only State Plan State. Hawaii has adopted the Federal standard.

[32] These 58 SICs include employers in maritime employment.

(excluding certain cities in these States) that have not adopted a statewide electrical code applicable to private sector employers. Table 6 summarizes these findings.

C. Benefits

Occupational fatalities associated with electrical accidents remain a significant and ongoing problem. The proposed standard would benefit workers by reducing their exposure to electrical hazards thereby reducing both fatal and nonfatal injuries.

Table 7 presents data from the *Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries* on the number of work-related injuries and deaths in private industry attributed to contact with electrical current for 1992–2002. While the numbers of both injuries and deaths appear to have declined, this decline has not been consistent throughout the time for which data are available. Electrical-related injuries increased between 1992 and 1994, then declined for 1995 to 1997. For 1998 and 1999, injuries again increased. Note that the percentage of occupational injuries associated with electrical hazards has remained essentially constant throughout 1992 to 2001. The number of deaths associated with contact with electrical current declined in 1993, but rose during 1994 and 1995. Deaths dropped in 1996, but rose again in 1997 and 1998. As a percentage of total occupational fatalities, death due to electrocution appears to have remained constant or declined slightly. However, contact with electrical current remains a significant source of occupational fatality, accounting for 5.2 percent of total occupational fatalities in 2002.

For more than 30 years, electrical hazards have been a target of OSHA regulations. The proposed standard will help to further reduce the number of deaths and injuries associated with electrical accidents, and ensure that a downward trend in these incidents is sustained.

To determine the extent to which the proposed standard may reduce the number of deaths attributable to electrical accidents, OSHA examined its accident investigation reports for the States without any statewide electrical code.[33] The most recent and complete reports cover 1990–1996, and provide detailed information on the cause of fatal electrical accidents. The accident cause can be used to ascertain whether the death would have been prevented by compliance with the proposed standard. As an initial screen, OSHA reviewed the reports for accidents that could have been prevented through the use of a GFCI. While OSHA expects that other provisions of the revised standard potentially will reduce deaths due to electrical accidents, this initial screen focused on GFCI-related accidents since they are relatively easy to isolate using a key word search through all reports. Thus, the accident report analysis is conservative in the sense that it likely understates the number of deaths preventable under the proposed revision to Subpart S.

OSHA found that there were at least nine deaths in these seven States during 1990–1996, or an average of 1.3 per year, that could have been prevented with the use of a GFCI. Based on EPA's estimate of a value of $6.1 million for a statistical life, the estimated 1.3 lives saved per year (that is, between 1 and 2 lives saved per year) under the proposed standard would translate to an annual benefit of $6.1 million to $12.2 million.[34] As noted above, the monetized benefits understate total benefits since they do cover all potentially preventable deaths. Moreover, they do not account for any preventable nonfatal injuries.

In addition to quantifiable potential benefits, this update to OSHA's electrical standards yields important unquantified benefits. The revised standard potentially reduces industry confusion and inefficiency associated with the current standard, which is out of date with today's technology. While OSHA has a long standing policy of permitting employers to comply with more current versions of national consensus standards to the extent the more current version is as protective as the older version, this does not address all the concerns with the outdated standard. The older electrical standards may not address the hazards associated with newer equipment and machinery, leaving employers unsure which requirements presently apply. For example, the proposal contains requirements for electric equipment installed in hazardous locations classified under the zone classification system, which is not addressed in the existing standard. (See the summary and explanation of zone classification in section V. F. earlier in the preamble.) The proposed update to Subpart S will reduce or eliminate these problems.

D. Estimation of Compliance Costs

OSHA adopted a conservative approach to estimating compliance costs, and consequently, the estimates reported below are likely to overstate actual compliance costs. In sum, OSHA did not estimate any cost savings associated with the proposed standard, even though many new, potentially less costly alternative compliance methods are being proposed. For example, as noted above, the proposal would permit electric equipment in Class I hazardous locations to be installed under the zone classification system, which is not addressed in the existing standard. Because the hazardous locations provision potentially reduces industry confusion and inefficiency associated with the current standard, costs savings are likely.

For all provisions with the exception of § 1910.304(b)(4)(ii)(A) and (B), cost estimates were developed on a project-level basis. This involved obtaining data on the number of construction and other major renovation, addition, and alteration projects performed annually in States and local jurisdictions that do not now mandate the 1999 NEC (or equivalent).[35] Table 8 summarizes the data on the number of projects potentially impacted by the proposed rule. In States and local jurisdictions that do not now mandate the 1999 NEC (or equivalent), the data indicate that there were a total of 29,306 project starts in 2001, consisting primarily (91 percent) of small projects under $3 million. Less than 0.5 percent of the projects were large projects over $25 million.

For § 1910.304(b)(4)(ii)(A) and (B), compliance costs were estimated on an establishment-level rather than project-level basis. As Table 6 suggests, it is estimated that approximately 861,400 establishments are in locations that either are currently following the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. These employers potentially are impacted by the proposed rule. Costs per provision were computed according to establishment size: establishments with fewer than 99 employees, establishments with 100–

[33] Some cities within these States have adopted the 1999 (or later) NEC, and these cities were excluded when examining the accident report data.

[34] See EPA's *Guidelines for Preparing Economic Analyses*, EPA 240–R–00–003, September 2000. Note that the $6.1 million is in 1999 dollars. If this figure is updated for inflation using the CPI as EPA indicates is appropriate, the estimated 1.3 lives saved per year would translate to an annual benefit of $6.6 million to $13.2 million (in 2002 dollars).

[35] Data on new and other (major renovation, addition, and alteration) construction projects started annually between 1998 and 2001 are compiled by F.W. Dodge (Schriver, 2002). While construction projects serve as the basis for estimating costs, construction is not covered by the proposed standard. Rather, it is the particular product or output of the construction project that is covered.

499 employees, and establishments with more than 500 employees.

All potentially impacted projects/establishments would not necessarily be affected by each and every provision, and some would not be affected at all in any given year. Thus, it was necessary to estimate the percentage of projects/establishments affected by each provision annually. This percentage, when multiplied by the number of potentially impacted projects/establishments yields the number of projects/establishments subject to each provision annually without considering baseline levels of compliance. Table 9 presents the estimated percentage of projects/establishments that actually would be affected by each provision annually. These estimates were based on experience and technical knowledge of electrical practices. OSHA seeks comment on the accuracy of these estimates.

Baseline levels of compliance associated with each of the new provisions also were considered. Baseline levels of compliance were estimated for each provision by considering construction requirements imposed by mortgage lenders and insurance carriers and installation practices routinely followed by licensed electricians (given their formal training). These requirements and installation practices are generally consistent with the current NEC requirements. Moreover, it is expected that these requirements and practices generally become more prevalent as the size of the establishment or project increases. Table 10 presents the estimated percentages for baseline compliance rates. These estimates were based on experience and technical knowledge of electrical practices. OSHA seeks comment on the accuracy of the estimated levels of baseline compliance.

For each provision, estimates of labor and material costs were developed on a project level basis. Labor costs are based on an hourly wage rate of $20.44 for an electrician in the construction sector (SICs 15–17) to perform the work (plus fringe benefits at 37%).[36] Costs for materials, which consist of labels, GFCIs, conduits, connectors, and outlets, are based on data in the Maintenance Direct Catalog of Lab Supply, Inc. (2001). Equipment costs were annualized assuming the useful life of the equipment is two years and an interest rate of 7 percent. Table 11 summarizes the key data and bases for the cost estimates.

Table 12 presents the estimates. The total annual incremental compliance costs associated with the new provisions in the proposed standard, for new electrical system and equipment installations, are estimated to be $9.8 million. The overwhelmingly majority of costs, 81.9 percent, are associated with § 1910.304(b)(4)(ii)(A) and (B). Since these provisions apply to temporary wiring installations, some of the costs and exposures to temporary wiring could potentially be incurred by construction employers instead of general industry employers. This could occur if general industry employers bring in construction companies to make changes in their electrical installations. Temporary wiring requirements for construction work are already covered under Subpart K of Part 1926; and, consequently, this analysis likely overestimates the incremental costs associated with the proposed revisions to Subpart S.

E. Technological and Economic Feasibility

As noted previously, the proposed rule incorporates the NFPA 70E recommendations developed in 2000, which are based on the 1999 NEC. The NFPA 70E Committee has updated the document in accordance with revisions to the NEC, which periodically recodifies acceptable electrical practices as a national consensus standard. As noted earlier, more than 80 percent of establishments covered by the proposed rule are located in areas that currently mandate adherence to these recommendations or the 1999 or more stringent version of the NEC. Moreover, a number of employers comply with the NFPA 70E recommendations in the absence of any legal obligation.[37] Thus, most potentially affected parties already are in compliance with the proposed rule, which clearly demonstrates that it is both technologically and economically feasible.

F. Regulatory Flexibility Screening Analysis and Regulatory Flexibility Certification

In order to determine whether a regulatory flexibility analysis is required under the Regulatory Flexibility Act, OSHA has evaluated the potential economic impacts of this action on small entities. Table 13 presents the data used in this analysis to determine whether this regulation would have a significant impact on a substantial number of small entities.

First, compliance costs were computed on a per establishment basis, which required consideration of the number of establishments potentially impacted. The analysis of CBP data discussed above indicated that approximately 861,400 establishments are in local jurisdictions in the 12 States that are either currently requiring compliance with the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. Regarding the documentation provisions for new installations in hazardous locations (§ 1910.307(b) in Table 12), only those industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers will be impacted. OSHA identified these industries by reviewing data on § 1910.307 citations issued between October 2000 and September 2001 (available on the OSHA Web site at *http://www.osha.gov/oshstats/*) and IMIS accident data from 1994 to 2001 indicating § 1910.307 citations (OSHA, 2001). OSHA estimated that approximately 441,400 establishments with hazardous locations are in local jurisdictions in the 12 States that either are currently following the 1996 NEC or have not adopted a statewide electrical code applicable to private sector employers. These are the establishments potentially impacted by the hazardous locations provision. The remaining provisions potentially affect all 861,400 establishments in the 12 States as noted above.

OSHA assumed for purposes of conducting the regulatory flexibility screening analysis, that small firms, on average, will conduct the same type and size of projects as larger establishments. This is a conservative assumption, since it is more likely that smaller establishments will tend to perform small sized, less costly projects. Consequently, OSHA applied average cost per establishment in analyzing effect on small entities. The average cost per establishment was computed by dividing the total costs reported in Table 12 by the number of affected establishments reported in Table 6. For Provisions 1 to 5 and 7, the cost per establishment is $10.44 and for Provision 6, the cost per establishment is $1.92. Thus, for industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers, the total cost per establishment is estimated to be $12.36.

[36] The wage rate data are for 2000, taken from the BLS (2001) *2000 National Occupational Employment Statistics (OES) Survey*. Fringe benefit rate data are from BLS (2000) *Employer Costs for Employee Compensation*, March. USDL: 00–186.

[37] As noted previously, construction requirements imposed by mortgage lenders and insurance carriers and installation practices followed by licensed electricians (given their formal training) are reasons to expect that some employers comply NFPA 70E recommendations in the absence of any legal obligation.

OSHA guidelines for determining the need for regulatory flexibility analysis require determining the regulatory costs as a percentage of the revenues and profits of small entities. OSHA derived estimates of the profits and revenues using data from U.S. Census and Dun and Bradstreet. In defining a small business, OSHA followed Small Business Administration (SBA) criteria for each sector. For many of the affected industries, the SBA small business criteria are determined directly by the number of employees. But, for those industries where the SBA small business criteria are not determined by the number of employees (but rather by annual sales), the sales-based criteria were converted to employment-based criteria. Specifically, an employment-based firm size standard was determined by first calculating an employment level, based on the industry average annual receipts per employee, which would be sufficient to produce a total sales amount per firm consistent with the SBA sales-based firm size standard.

As shown in Table 13, at worst, compliance costs represent 0.01 percent of the revenues (for SIC 72, Personal Services) and 0.15 percent of profits (for SIC 56, apparel and Accessory Stores). On average (computed by weighting by number of establishments), compliance costs constitute 0.002 percent of revenues and 0.048 percent of profits. Based on this evaluation, OSHA certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities.[38]

TABLE 5.—PROPOSED CHANGES TO EXISTING STANDARD WITH COST IMPLICATIONS

Proposed standard	Comments on cost impact	Types of establishments/projects affected	Basis for estimating costs	Provisions identified in proposed § 1910.302(b)(4) [1]
1910.303(c)(2)(ii)	Requires the purchase and installation of labels.	All Establishments All Projects.	Projects.	
1910.303(h)(5)(iii)(B)	Requires the purchase and installation of signs.	All Establishments All Projects.	Projects.	
1910.304(b)(1)	Requires the purchase and installation of labels and identification of branch circuits.	All Establishments All Projects.	Projects	X
1910.304(b)(3)	Requires the purchase and installation of labels and identification of branch circuits.	All Establishments All Projects.	Projects	X
1910.304(b)(4)(i)	Requires the purchase and installation of GFCI in place of standard outlets.	All Establishments All Projects.	Projects.	
1910.304(b)(4)(ii) (A–B).	Requires that facility purchase GFCI equipment (power stations or extension cords) for use by maintenance personnel.	All Establishments All Projects.	Establishments.	
1910.306(j)(1)(iii)	Change in design impacts construction cost (near universal compliance assumed).	Real Estate Development and Dwelling Projects.	Projects	X
1910.307(b)	Facility owner must develop documentation	Industrial Establishments All Projects.	Projects	X
1910.308(a)(5)(vi)(B)	Requires the purchase and installation of labels and identification.	All Establishments All Projects.	Projects	X
1910.308(d)(2)(ii)	Requires the purchase and installation of labels and identification.	All Establishments All Projects.	Projects.	
1910.308(e)(1)(i), 1910.308(e)(1)(ii), 1910.308(e)(1)(iii).	Change in facility design and additional materials and installation cost.	All Establishments Large Projects.	Projects.	

[1] **Note:** Provisions listed in § 1910.302(b)(4) only apply to new installations.

TABLE 6.—ESTABLISHMENTS AND EMPLOYMENT BY VERSION OF NEC ADOPTED

Applicable version of NEC	Establishments		Employment	
	Number (million)	Percent of total	Number (million)	Percent of total
1996	0.4	6.3	5.6	6.3
1999 or 2002	4.8	84.7	76.6	85.3
None	0.5	9.0	7.6	8.4
Total	5.6	100	89.8	100

Source: Compiled from 1997 *County Business Patterns* database.

[38] 38 OSHA also examined the situation where all compliance costs accrue to the construction sector (in SIC 1731, Electrical Services). In this case, costs constitute 0.04 percent of revenues and 1.3 percent of profits. Thus, even if all costs are assigned to construction, the proposed regulation will not have a significant impact on small entities.

TABLE 7.—FATAL AND NONFATAL OCCUPATIONAL INJURIES ATTRIBUTABLE TO CONTACT WITH ELECTRIC CURRENT

Year	Number of injuries involving days away from work	Percent of total nonfatal occupational injuries	Number of deaths	Percent of total fatal occupational injuries
1992	4,806	0.2	317	5.8
1993	4,995	0.2	303	5.4
1994	6,018	0.3	332	5.6
1995	4,744	0.2	327	6.0
1996	4,126	0.2	268	4.8
1997	3,170	0.2	282	5.0
1998	3,910	0.2	324	5.9
1999	4,224	0.2	259	4.7
2000	3,704	0.2	256	4.8
2001	3,394	0.2	285	4.8
2002	N/A	N/A	289	5.2

N/A=not available.
Source: U.S. Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses* and the *Census of Fatal Occupational Injuries (http://www.bls.gov/iif/home.htm).*

TABLE 8.—CONSTRUCTION PROJECT-STARTS IN 2001 FOR STATES THAT HAVE ADOPTED THE 1996 NEC OR DO NOT HAVE A STATEWIDE ELECTRICAL CODE

Building type	Size of project (contract value)			Total
	Less than $3 million (small)	$3–25 million (medium)	More than $25 million (large)	
Commercial and Public Buildings	15219	1490	45	16754
Warehouses	1659	204	8	1871
Health Facilities and Laboratories	1691	245	33	1969
Funeral and Interment Facilities	45			45
Athletic and Entertainment Facilities	54	9	2	65
Auto, Bus, and Truck Service	797	47		844
Residential Housing	1491	169	6	1666
Apartments, Hotels and Dormitories	2505	269	24	2798
Tanks	309	8		317
Hydroelectric Power Plants	3			3
Natural Gas Plants	2	2	1	5
Gas, Water, and Sewer Lines	2340	91	1	2432
Manufacturing Facilities	447	84	6	537
Total	26562	2618	126	29306

Source: William R. Schriver (2002), The University of Tennessee, Knoxville, Construction Industry Research and Policy Center, based on F.W. Dodge data on construction project starts for 2001.

TABLE 9.—ESTIMATED PERCENTAGES OF POTENTIALLY AFFECTED PROJECTS/ESTABLISHMENTS ACTUALLY AFFECTED BY PROVISION AND PROJECT/ESTABLISHMENT SIZE

Provision No.	Proposed standard	Description of requirement	Project/establishment size (in percent)		
			Small	Medium	Large
1	1910.303(c)(2)(ii)	Electrical Connections—Terminals	50	50	100
2	1910.303(h)(5)(iii)(B)	Working Space and Guarding—Posting of Warning Signs.	50	100	100
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits.	50	50	100
1b	1910.304(b)(3)	Branch Circuits—Ground-Fault Circuit Interrupter Protection For Personnel.	50	50	100
3	1910.304(b)(4)(i)	Temporary Wiring Installations	100	100	100
4	1910.304(b)(4)(ii)(A–B)	Temporary Wiring Installations	30	80	100
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations—Receptacles.	20	80	100
6	1910.307(b)	Hazardous (Classified) Locations—Documentation.	60	80	100
1c	1910.308(a)(5)(vi)(B)	Systems Over 600 Volts, Nominal—Interrupting and Isolating Devices.	50	50	100
1d	1910.308(d)(2)(ii)	Fire Alarm Systems—Power Sources	50	50	100

TABLE 9.—ESTIMATED PERCENTAGES OF POTENTIALLY AFFECTED PROJECTS/ESTABLISHMENTS ACTUALLY AFFECTED BY PROVISION AND PROJECT/ESTABLISHMENT SIZE—Continued

Provision No.	Proposed standard	Description of requirement	Project/establishment size (in percent)		
			Small	Medium	Large
7	1910.308(e)(1)(i–iii)	Communication Systems—Protective Devices	5	60	100

Source: OSHA estimates, based on experience and knowledge of electrical practices.

TABLE 10.—ESTIMATED PERCENTAGES FOR BASELINE COMPLIANCE BY PROVISION AND PROJECT/ESTABLISHMENT SIZE

Provision No.	Proposed standard	Description of requirement	Project/establishment size (in percent)		
			Small	Medium	Large
1	1910.303(c)(2)(ii)	Electrical Connections—Terminals	25	25	50
2	1910.303(h)(5)(iii)(B)	Working Space and Guarding—Posting of Warning Signs.	25	25	50
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits.	25	25	50
1b	1910.304(b)(3)	Branch Circuits—Ground-Fault Circuit Interrupter Protection For Personnel.	25	25	50
3	1910.304(b)(4)(i)	Temporary Wiring Installations	50	95	95
4	1910.304(b)(4)(ii)(A–B)	Temporary Wiring Installations	50	95	95
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations—Receptacles.	60	90	90
6	1910.307(b)	Hazardous (Classified) Locations—Documentation.	50	80	80
1c	1910.308(a)(5)(vi)(B)	Systems Over 600 Volts, Nominal—Interrupting and Isolating Devices.	25	25	50
1d	1910.308(d)(2)(ii)	Fire Alarm Systems—Power Sources	25	25	50
7	1910.308(e)(1)(i–iii)	Communication Systems—Protective Devices	10	30	40

Source: OSHA estimates, based on experience and knowledge of electrical practices.

TABLE 11.—DATA AND BASES FOR COST ANALYSIS

Provision No.	Proposed standard	Labor costs	Material costs
1	1910.303(c)(2)(ii) 1910.304(b)(1) 1910.308(a)(5)(vi)(B) 1910.304(b)(3) 1910.308(d)(2)(ii)	1 minute of labor to install label at $28/hour ($20.44 × 1.37).	Cost of label: $1.
2	1910.303(h)(5)(iii)(B)	1 minute of labor to install label at $28/hour ($20.44 × 1.37).	Cost of label: $1.
3	1910.304(b)(4)(i)	None	GFCI: $5.
4	1910.304(b)(4)(ii)(A)and (B)	None	GFCI power station or cord: $55 each, annualized over 2-year useful life.
5	1910.306(j)(1)(iii)	3 hours at $28/hour ($20.44 × 1.37)	Various conduit, connectors, outlets: $75.
6	1910.307(b)	4 hours at $28/hour ($20.44 × 1.37)	None.
7	1910.308(e)(1)(i),(ii), and (iii)	1 minute of labor to install label at $28/hour ($20.44 × 1.37).	Cost of label: $1.

Note: The wage rate data are for 2000, taken from the BLS (2001) *2000 National Occupational Employment Statistics (OES) Survey.* Fringe benefit rate data are from BLS (2000) *Employer Costs for Employee Compensation,* March. USDL: 00–186.

TABLE 12.—ANNUAL INCREMENTAL COMPLIANCE COSTS FOR PROPOSED CHANGES TO SUBPART S ELECTRICAL STANDARD

Provision No.	Proposed standard	Description of requirement	Annual costs for projects/establishments [1]			
			Total	Small	Medium	Large
1	1910.303(c)(2)(ii)	Electrical Connections—Terminals	639,881	365,239	239,991	34,651
2	1910.303(h)(5)(iii)(B)	Working Space and Guarding—Posting of Warning Signs.	66,839	49,141	16,145	1,554
1a	1910.304(b)(1)	Branch Circuits—Identification of Multiwire Branch Circuits.	Included in Provision 1			

TABLE 12.—ANNUAL INCREMENTAL COMPLIANCE COSTS FOR PROPOSED CHANGES TO SUBPART S ELECTRICAL STANDARD—Continued

Provision No.	Proposed standard	Description of requirement	Annual costs for projects/establishments [1]			
			Total	Small	Medium	Large
1b	1910.304(b)(3)	Branch Circuits—Ground-Fault Circuit Interrupter Protection For Personnel.	Included in Provision 1			
3	1910.304(b)(4)(i)	Temporary Wiring Installations	140,930	132,810	6,545	1,575
4	1910.304(b)(4)(ii)(A–B).	Temporary Wiring Installations	8,057,529	7,686,276	206,832	164,420
5	1910.306(j)(1)(iii)	Swimming Pools, Fountains, and Similar Installations-Receptacles.	36,050	31,865	3,422	763
6	1910.307(b)	Hazardous (Classified) Locations—Documentation.	846,930	756,479	77,816	12,635
1c	1910.308(a)(5)(vi)(B)	Systems Over 600 Volts, Nominal—Interrupting and Isolating Devices.	Included in Provision 1			
1d	1910.308(d)(2)(ii)	Fire Alarm Systems—Power Sources	Included in Provision 1			
7	1910.308(e)(1)(i–iii)	Communication Systems-Protective Devices.	51,044	8,172	37,593	5,280
Total			9,839,204	9,029,982	588,343	220,879

[1] The total cost per establishment is estimated to be $12.36 for industries that handle flammable and/or combustible liquids, vapors, gases, dusts, and/or fibers and $10.44 for all other industries.

Source: OSHA estimates

Notes:

(a) Compliance costs for all provisions except 4 are based on projects. Compliance costs for provision 4 are based on establishments (small establishments have 1–99 employees medium establishments have 100–499 employees, and large establishments have 500+ employees).

(b) Represents the number of projects (or establishments) incurring costs. Factors in both the percentage of projects (or establishments) for which each provision would be applicable, as well as voluntary compliance with each provision.

TABLE 13.—IMPACTS ON SMALL BUSINESSES

SIC	Industry description	Number of SBA establishments	SBA revenues	Revenue per establishment	Profit rate (%)	Profit per establishment	Cost as a percent of revenue	Cost as a percent of Profit (in percent)
700	Agricultural services	109,663	$38,501,047	$351,085	6.02	$21,130	0.0030	0.0494
800	Forestry	2,400	1,496,747	623,645	10.30	64,235	0.0017	0.0163
900	Fishing, hunting, and trapping	NA	NA	NA	5.80	NA	NA	NA
1300	Oil And Gas Extraction	14,787	29,931,841	2,024,200	8.65	175,093	0.0006	0.0071
1500	General building contractors	195,315	234,203,450	1,199,106	4.00	47,964	0.0009	0.0218
1600	Heavy construction, except building	35,618	68,664,092	1,927,792	4.00	77,112	0.0005	0.0135
1700	Special trade contractors	426,477	270,401,924	634,036	4.00	25,361	0.0016	0.0412
2000	Food And Kindred Products	15,992	104,629,113	6,542,591	3.46	226,600	0.0002	0.0055
2100	Tobacco Products	91	1,255,255	13,794,011	4.02	554,130	0.0001	0.0022
2200	Textile Mill Products	4,845	20,377,246	4,205,830	2.77	116,423	0.0003	0.0106
2300	Apparel And Other Textile Products	22,383	38,507,048	1,720,370	2.56	44,010	0.0007	0.0281
2400	Lumber And Wood Products	35,076	58,343,756	1,663,353	3.90	64,854	0.0007	0.0191
2500	Furniture And Fixtures	11,217	26,295,821	2,344,283	3.51	82,285	0.0005	0.0150
2600	Paper And Allied Products	4,057	31,334,277	7,723,509	4.50	347,629	0.0002	0.0036
2700	Printing And Publishing	57,018	85,620,541	1,501,641	3.80	57,055	0.0008	0.0217
2800	Chemicals And Allied Products	8,227	59,010,014	7,172,726	4.49	321,776	0.0002	0.0038
2900	Petroleum And Coal Products	1,047	13,950,653	13,324,406	2.99	398,317	0.0001	0.0031
3000	Rubber And Misc. Plastics Products	13,043	58,709,872	4,501,255	4.02	181,167	0.0003	0.0068
3100	Leather And Leather Products	1,675	4,003,751	2,390,299	2.20	52,509	0.0005	0.0235
3200	Stone, Clay, And Glass Products	11,791	34,254,470	2,905,137	4.93	143,127	0.0004	0.0086
3300	Primary Metal Industries	4,806	36,511,582	7,597,083	4.52	343,213	0.0002	0.0036
3400	Fabricated Metal Products	34,250	113,752,781	3,321,249	4.55	150,988	0.0004	0.0082
3500	Industrial Machinery And Equipment	52,548	127,178,710	2,420,239	4.05	97,917	0.0005	0.0126
3600	Electronic & Other Electric Equipment	14,355	69,499,940	4,841,514	5.59	270,705	0.0003	0.0046
3700	Transportation Equipment	10,653	41,544,504	3,899,794	3.74	145,974	0.0003	0.0085
3800	Instruments And Related Products	10,190	33,908,725	3,327,647	5.06	168,410	0.0004	0.0073
3900	Miscellaneous Manufacturing Industries	17,837	30,627,905	1,717,100	3.80	65,322	0.0007	0.0189
4000	Railroad transportation	NA	NA	NA	11.08	NA	NA	NA
4100	Local and interurban passenger transit	16,537	7,690,615	465,055	4.51	20,964	0.0022	0.0498
4200	Trucking And Warehousing	114,623	79,888,400	696,967	3.91	27,278	0.0018	0.0453
4400	Water Transportation	8,051	14,075,608	1,748,306	7.48	130,855	0.0007	0.0094
4500	Transportation by air	6,386	15,156,218	2,373,351	3.62	85,925	0.0004	0.0121
4600	Pipelines, Except Natural Gas	39	986,979	25,307,154	6.55	1,657,050	0.0000	0.0007

TABLE 13.—IMPACTS ON SMALL BUSINESSES—Continued

SIC	Industry description	Number of SBA establishments	SBA revenues	Revenue per establishment	Profit rate (%)	Profit per establishment	Cost as a percent of revenue	Cost as a percent of Profit (in percent)
4700	Transportation Services	40,529	19,513,397	481,468	3.39	16,327	0.0026	0.0757
4800	Communications	17,482	41,125,079	2,352,424	5.58	131,244	0.0004	0.0080
4900	Electric, Gas, And Sanitary Services	8,938	10,824,146	1,211,026	10.37	125,641	0.0010	0.0098
5000	Wholesale Trade—Durable Goods	258,492	837,107,306	3,238,426	2.54	82,401	0.0004	0.0150
5100	Wholesale Trade—Nondurable Goods	143,751	637,454,650	4,434,436	4.46	197,917	0.0003	0.0062
5200	Building Materials & Garden Supplies	46,450	37,776,200	813,266	2.37	19,289	0.0015	0.0641
5300	General Merchandise Stores	8,796	3,346,901	380,503	2.70	10,283	0.0027	0.1015
5400	Food Stores	123,572	101,566,550	821,922	1.41	11,595	0.0013	0.0900
5500	Automotive Dealers & Service Stations	116,015	149,337,410	1,287,225	1.45	18,609	0.0010	0.0664
5600	Apparel And Accessory Stores	50,308	18,706,435	371,838	1.85	6,867	0.0028	0.1520
5700	Furniture And Homefurnishings Stores	78,842	45,392,798	575,744	2.28	13,142	0.0018	0.0794
5800	Eating And Drinking Places	355,297	128,561,814	361,843	3.00	10,850	0.0034	0.1139
5900	Miscellaneous Retail	258,538	119,265,615	461,308	2.49	11,479	0.0027	0.1077
6000	Depository Institutions	14,378	15,538,559	1,080,718	10.80	116,718	0.0010	0.0089
6100	Nondepository Institutions	21,262	13,454,697	632,805	15.05	95,230	0.0016	0.0110
6200	Security And Commodity Brokers	27,262	19,644,662	720,588	13.32	95,949	0.0014	0.0109
6300	Insurance Carriers	4,967	5,850,805	1,177,935	6.82	80,375	0.0009	0.0130
6400	Insurance Agents, Brokers, & Service	119,907	47,083,678	392,668	6.83	26,800	0.0027	0.0390
6500	Real Estate	230,304	142,479,284	618,657	13.31	82,340	0.0017	0.0127
6700	Holding And Other Investment Offices	21,022	35,174,755	1,673,235	24.01	401,733	0.0006	0.0026
7000	Hotels And Other Lodging Places	47,698	24,876,889	521,550	6.96	36,302	0.0020	0.0288
7200	Personal Services	176,477	36,957,629	209,419	5.86	12,262	0.0050	0.0851
7300	Business Services	337,126	188,061,601	557,838	4.79	26,703	0.0022	0.0463
7500	Auto Repair, Services, and Parking	167,057	66,003,052	395,093	4.39	17,356	0.0031	0.0712
7600	Miscellaneous Repair Services	63,328	25,861,556	408,375	5.44	22,198	0.0030	0.0557
7800	Motion Pictures	29,959	13,026,870	434,823	5.14	22,341	0.0024	0.0467
7900	Amusement & Recreation Services	90,742	47,922,810	528,122	4.28	22,604	0.0023	0.0547
8000	Health Services	413,561	243,370,668	588,476	6.17	36,312	0.0021	0.0340
8100	Legal Services	156,877	54,265,197	345,909	17.50	60,534	0.0030	0.0172
8200	Educational Services	40,592	25,677,552	632,577	8.14	51,502	0.0017	0.0203
8300	Social Services	117,544	50,553,841	430,084	4.44	19,088	0.0024	0.0547
8400	Museums, Botanical, Zoological Gardens	4,912	2,928,264	596,145	21.45	127,873	0.0018	0.0082
8600	Membership Organizations	242,081	78,452,141	324,074	7.21	23,371	0.0032	0.0447
8700	Engineering and management services	271,169	151,671,072	559,323	6.39	35,745	0.0019	0.0292
8900	Services, n.e.c.	16,395	8,169,059	498,265	6.80	33,882	0.0021	0.0308

VII. State Plan Standards

The 26 States or territories with OSHA-approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within 6 months of the publication date of the final standard. These are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (for State and local government employees only), New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VIII. Environmental Impact Analysis

The proposed standard's provisions have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Part 1502), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, OSHA has determined that these provisions will have no significant effect on air, water or soil quality, plant or animal life, on the use of land, or other aspects of the environment.

IX. Unfunded Mandates

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). For the purposes of the UMRA, the Agency certifies that this proposed rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

X. Federalism

OSHA has reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act expresses Congress's intent to preempt State laws where OSHA has promulgated occupational safety and health standards. A State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. 667, *Gade* v. *National Solid Wastes Management Association,* 505 U.S. 88 (1992). Occupational safety and health standards developed by such Plan States must, among other things, be at least as

effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to the statutory limitations of the OSH Act, State-Plan States are free to develop and enforce their own requirements for occupational safety and health protections related to electrical installation.

Although OSHA has a clear statutory mandate to preempt state occupational safety and health laws, the proposed standard would introduce few new requirements that are not already mandated by applicable State and local law. As discussed above in the Economic Analysis, most States and municipalities require compliance with the NEC, which is consistent with the proposed rule.

XI. OMB Review Under the Paperwork Reduction Act of 1995

The proposed Electrical Standard contains collection-of-information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.*, and OMB's regulations at 5 CFR part 1320. The Paperwork Reduction Act defines "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format * * *" (44 U.S.C. 3502(3)(A)). OMB is currently reviewing OSHA's request for approval of the proposed collections. OSHA solicits comments on the collection-of-information requirements and the estimated burden hours associated with these collections, including comments on the following:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological techniques for collecting and transmitting information.

The title, description of the need for and proposed use of the information, description of the respondents, and frequency of response of the information collections are described below with an estimate of the annual reporting burden and cost as required by § 1320.5(a)(1)(iv) and § 1320.8(d)(2).

Title: Design Safety Standards for Electrical Systems (§§ 1910.302 through 1910.308).

Description and Proposed use of the collections of information: The proposed standard would impose new information collection requirements for purposes of the PRA. These collection of information requirements in the proposal (§§ 1910.303(f)(5)(i), 1910.303(f)(5)(ii), 1910.304(b)(1), 1910.304(b)(3), 1910.306(c)(6)(i), 1910.306(c)(6)(ii), 1910.306(k)(4)(iv)(B), 1910.307(b), 1910.308(b)(3)(i), and 1910.308(b)(3)(ii)) have not been approved by the Office of Budget and Management (OMB). These provisions are needed to provide electrical safety to employees against the electric shock hazards that might be present in the workplace. The marking of electrical equipment with the proper ratings, identifying the phase and system of each ungrounded conductor, identifying the disconnecting means with a sign for the location, or documenting hazardous classified areas are all ways of reducing the electrical hazards pose on employees. OSHA will use the records developed in response to this standard to determine compliance. The employer's failure to generate and disclose the information required in this Standard will affect significantly OSHA's effort to control and reduce injuries and fatalities related to electrical hazards in the workplace.

Summary of the Collections of Information: The following are new collections of information contained in the Design Safety Standards for Electrical Systems (§§ 1910.302 through 1910.308).

Section 1910.303 Marking Requirements for Series Combination Ratings

Paragraphs (f)(5)(i) and (ii) of this section require the employer to mark in the indicated field the circuit breakers' and fuses' series combination ratings of the equipment given by the manufacture. The wording shall state "Caution—Series Combination System Rated ____ Amperes. Identified Replacement Component Required." The employer has to legibly mark in the blank to indicate the rating.

Section 1910.304 Wiring Design and Protection

Paragraph (b)(1) of this section requires the employer to identify the phase and system of each ungrounded conductor of a multiwire branch circuit in a building containing more than one nominal voltage system. This marking is required to be permanently posted on each panelboard.

Paragraph (b)(3) requires the employer to identify the phase and system of each ungrounded system conductor in a building where there is more than one nominal voltage system. The identification is required to be permanently posted at each branch circuit panelboard.

Section 1910.306 Specific Purpose Equipment and Installations

Paragraph (c)(6)(i) requires the employer to identify the disconnecting means with the number that corresponds to the driving machine number that it controls where there is more than one driving machine in the machine room.

Paragraph (c)(6)(ii) requires the employer to provide the disconnecting means with a sign to identify the location of the supply-side overcurrent protective device.

Paragraph (k)(4)(iv)(B) requires the employer to mark the systems to which single-pole separable connectors used in portable professional motion picture and television equipment are connected if the connectors are interchangeable for ac or dc use or for different current ratings on the same premises.

Section 1910.307 Hazardous (Classified) Locations

Paragraph (b) requires the employer to properly document all areas designated as hazardous (classified) locations. This documentation shall be available to those authorized to design, install, inspect, maintain, or operate electric equipment at the location.

Section 1910.308 Special Systems

Paragraph (b)(3)(i) requires the employer to place a sign at the service entrance equipment indicating the type and location of on-site emergency power sources. A sign is not required for individual unit equipment.

Paragraph (b)(3)(ii) requires a sign at the grounding location that identifies all emergency and normal sources connected at the location.

Respondents: Employers who design, install, or use electrical installations and utilization equipment within or on buildings, structures, and other premises.

Frequency of Response: On occasion. Most of the collections of information are markings, labels or signs that provide information to protect employees against the electric shock hazards that might be present in the workplace. The collections of information are completed at the time electrical work is being performed.

Average Time per Response: Time per response varies from one minute for an engineering manager to brief the technician on the type and location of on-site emergency power sources to 4 hours for an electrical certified electrical engineer to determine and document all areas designated as hazardous (classified) location.

Total Burden Hours: 8,157.

Estimated Costs (Operating and Maintenance): -0-.

Interested parties who wish to comment on the paperwork requirements in this proposal must send their written comments to the OSHA Docket Office, Docket No. S–108C, Occupational Safety and Health, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, and to the Office of Information and Regulatory Affairs, New Executive Office Building, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attn: OSHA Desk Officer (RIN 1218-AB95)) . The Agency also encourages commenters to include their comments on paperwork requirements with their other comments on the proposed rule submitted to OSHA.

XII. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include objections to the proposal with or without a hearing request, as well as comments that endorse or support the proposed amendment set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a balanced public response on the issues involved. OSHA is particularly interested in receiving comments that address provisions of the proposed rule that differ from those in existing Subpart S. See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and information to the Agency. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, members of the public may request an informal hearing by following the instructions under the section of this **Federal Register** notice titled **ADDRESSES.** These requests must include the objections to the proposal that warrant a hearing. The party making objections that are part of a hearing request must:

- Include their name and address;
- Ensure that the request is sent or postmarked no later than June 4, 2004;
- Number each objection separately;
- Specify with particularity the grounds for each objection;
- Include a detailed summary of the evidence supporting each objection which they plan to offer at the requested hearing.

XIII. List of Subjects

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

XIV. Authority and Signature

This document was prepared under the direction of John Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR Part 1911.

Signed at Washington, DC, this 23rd day of March, 2004.

John Henshaw,

Assistant Secretary of Labor.

It is proposed to amend Part 1910 of Title 29 of the Code of Federal Regulations as follows:

Subpart F—[Amended]

1. The authority citation for Subpart F would be revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Appendix D to § 1910.66 [Amended]

2. Appendix D to § 1910.66 would be amended as follows:

a. The words "the National Electrical Code, NFPA 70–1971; ANSI C1–1971 (Rev. of C1–1968)" would be revised to read "subpart S of this part" in paragraph (c)(22)(i).

b. The words "Article 610 of the National Electrical Code, NFPA 70–1971; ANSI C1—1971 (Rev. of C1–1968)" would be revised to read "subpart S of this part" in paragraph (c)(22)(vii).

Subpart S—[Amended]

3. The authority citation for Subpart S would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 8–76 (41 FR 25059), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

4. Sections 1910.302 through 1910.308 would be revised to read as follows:

Design Safety Standards for Electrical Systems

§ 1910.302 Electric utilization systems.

Sections 1910.302 through 1910.308 contain design safety standards for electric utilization systems.

(a) *Scope*—(1) *Covered.* The provisions of §§ 1910.302 through 1910.308 of this subpart cover electrical installations and utilization equipment installed or used within or on buildings, structures, and other premises including:

(i) Yards,

(ii) Carnivals,

(iii) Parking and other lots,

(iv) Mobile homes,

(v) Recreational vehicles,

(vi) Industrial substations,

(vii) Conductors that connect the installations to a supply of electricity, and

(viii) Other outside conductors on the premises.

(2) *Not covered.* The provisions of §§ 1910.302 through 1910.308 of this subpart do not cover:

(i) Installations in ships, watercraft, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles.

(ii) Installations underground in mines.

(iii) Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communication purposes.

(iv) Installations of communication equipment under the exclusive control of communication utilities, located outdoors or in building spaces used exclusively for such installations.

(v) Installations under the exclusive control of electric utilities for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, etc., or outdoors by established rights on private property.

(b) *Extent of application*—(1) *Requirements applicable to all installations.* The following requirements apply to all electrical

installations and utilization equipment, regardless of when they were designed or installed:

§ 1910.303(b)	Examination, installation, and use of equipment.
§ 1910.303(c)(3)	Electrical connections—Splices.
§ 1910.303(d)	Arcing parts.
§ 1910.303(e)	Marking.
§ 1910.303(f), except (f)(4) and (f)(5)	Disconnecting means and circuits.
§ 1910.303(g)(2)	600 volts or less—Guarding of live parts.
§ 1910.304(f)(1)(i), (f)(1)(iv), and (f)(1)(v)	Overcurrent protection—600 volts, nominal, or less.
§ 1910.304(g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (g)(1)(v)	Grounding—Systems to be grounded.
§ 1910.304(g)(3)	Grounding—Grounding connections.
§ 1910.304(g)(4)	Grounding—Grounding path.
§ 1910.304(g)(5)(iv)(A) through (g)(5)(iv)(D), and (g)(5)(vi)	Grounding—Supports, enclosures, and equipment to be grounded.
§ 1910.304(g)(6)	Grounding—Nonelectrical equipment.
§ 1910.304(g)(7)(i)	Grounding—Methods of grounding fixed equipment.
§ 1910.305(g)(1)	Flexible cords and cables—Use of flexible cords and cables.
§ 1910.305(g)(2)(ii) and (g)(2)(iii)	Flexible cords and cables—Identification, splices, and terminations.
§ 1910.307	Hazardous (classified) locations.

(2) *Requirements applicable to installations made after March 15, 1972.* Every electrical installation and all utilization equipment installed or overhauled after March 15, 1972, shall comply with the provisions of §§ 1910.302 through 1910.308, except as noted in paragraphs (b)(3) and (b)(4) of this section.

(3) *Requirements applicable only to installations made after April 16, 1981.* The following requirements apply only to electrical installations and utilization equipment installed after April 16, 1981:

§ 1910.303(h)(4)	Over 600 volts, nominal—Entrance and access to work space.
§ 1910.304(f)(1)(vii) and (f)(1)(viii)	Overcurrent protection—600 volts, nominal, or less.
§ 1910.304(g)(8)(i)	Grounding—Grounding of systems and circuits of 1000 volts and over (high voltage).
§ 1910.305(j)(6)(ii)(D)	Equipment for general use—Capacitors.
§ 1910.306(c)(9)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Interconnection between multicar controllers.
§ 1910.306(i)	Electrically driven or controlled irrigation machines.
§ 1910.306(j)(5)	Swimming pools, fountains, and similar installations—Fountains.
§ 1910.308(a)(1)(ii)	Systems over 600 volts, nominal—Aboveground wiring methods.
§ 1910.308(c)(2)	Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Marking.
§ 1910.308(d)	Fire alarm systems.

(4) *Requirements applicable only to installations made after the effective date of the final rule.* The following requirements apply only to electrical installations and utilization equipment installed after the effective date of the final rule:

§ 1910.303(f)(4)	Disconnecting means and circuits—Capable of accepting a lock.
§ 1910.303(f)(5)	Disconnecting means and circuits—Marking for series combination ratings.
§ 1910.303(g)(1)(iv) and (g)(1)(vii)	600 Volts, nominal, or less—Space about electric equipment.
§ 1910.303(h)(5)(vi)	Over 600 volts, nominal—Working space and guarding.
§ 1910.304(b)(1)	Branch circuits—Identification of multiwire branch circuits.
§ 1910.304(b)(3)	Branch circuits—Identification of ungrounded conductors.
§ 1910.304(b)(4)(i)	Branch circuits—Ground-fault circuit interrupter protection for personnel.
§ 1910.304(f)(2)(i)(A), (f)(2)(i)(B) (but not the introductory text to § 1910.304(f)(2)(i)), and (f)(2)(iv)(A).	Overcurrent protection—Feeders and branch circuits over 600 volts, nominal.
§ 1910.305(a)(3)(v)	Wiring methods—Cable trays.
§ 1910.305(c)(3)(ii)	Switches—Connection of switches.
§ 1910.305(c)(5)	Switches—Grounding.
§ 1910.306(a)(1)(ii)	Electric signs and outline lighting—Disconnecting means.
§ 1910.306(c)(4)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Operation.
§ 1910.306(c)(5)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Location.
§ 1910.306(c)(6)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Identification and signs.
§ 1910.306(c)(7)	Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts—Single-car and multicar installations.
§ 1910.306(j)(1)(iii)	Swimming pools, fountains, and similar installations—Receptacles.
§ 1910.306(k)	Carnivals, circuses, fairs, and similar events.
§ 1910.308(a)(5)(v) and (a)(5)(vi)(B)	Systems over 600 volts, nominal—Interrupting and isolating devices.
§ 1910.308(a)(7)(vi)	Systems over 600 volts, nominal—Tunnel installations.
§ 1910.308(b)(3)	Emergency power systems—Signs.

§ 1910.308(c)(3)	Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits—Separation from conductors of other circuits.
§ 1910.308(f)	Solar photovoltaic systems.

(c) *Applicability of requirements for disconnecting means.* The requirement in § 1910.147(c)(2)(iii) that energy isolating devices be capable of accepting a lockout device whenever replacement or major repair, renovation or modification of a machine or equipment is performed, and whenever new machines or equipment are installed after January 2, 1990, applies in addition to any requirements in § 1910.303 through § 1910.308 that disconnecting means be capable of being locked in the open position under certain conditions.

§ 1910.303 General.

(a) *Approval.* The conductors and equipment required or permitted by this subpart shall be acceptable only if approved, as defined in § 1910.399.

(b) *Examination, installation, and use of equipment*—(1) *Examination.* Electric equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. Safety of equipment shall be determined using the following considerations:

(i) Suitability for installation and use in conformity with the provisions of this subpart;

Note to paragraph (b)(1)(i) of this section: Suitability of equipment for an identified purpose may be evidenced by listing or labeling for that identified purpose.

(ii) Mechanical strength and durability, including, for parts designed to enclose and protect other equipment, the adequacy of the protection thus provided;

(iii) Wire-bending and connection space;

(iv) Electrical insulation;

(v) Heating effects under all conditions of use;

(vi) Arcing effects;

(vii) Classification by type, size, voltage, current capacity, and specific use; and

(viii) Other factors that contribute to the practical safeguarding of persons using or likely to come in contact with the equipment.

(2) *Installation and use.* Listed or labeled equipment shall be installed and used in accordance with any instructions included in the listing or labeling.

(3) *Insulation integrity.* Completed wiring installations shall be free from short circuits and from grounds other than those required or permitted by this subpart.

(4) *Interrupting rating.* Equipment intended to interrupt current at fault levels shall have an interrupting rating sufficient for the nominal circuit voltage and the current that is available at the line terminals of the equipment. Equipment intended to interrupt current at other than fault levels shall have an interrupting rating at nominal circuit voltage sufficient for the current that must be interrupted.

(5) *Circuit impedance and other characteristics.* The overcurrent protective devices, the total impedance, the component short-circuit current ratings, and other characteristics of the circuit to be protected shall be selected and coordinated to permit the circuit protective devices used to clear a fault to do so without the occurrence of extensive damage to the electrical components of the circuit. This fault shall be assumed to be either between two or more of the circuit conductors, or between any circuit conductor and the grounding conductor or enclosing metal raceway.

(6) *Deteriorating agents.* Unless identified for use in the operating environment, no conductors or equipment shall be located in damp or wet locations; where exposed to gases, fumes, vapors, liquids, or other agents that have a deteriorating effect on the conductors or equipment; or where exposed to excessive temperatures.

(7) *Mechanical execution of work.* Electric equipment shall be installed in a neat and workmanlike manner.

(i) Unused openings in boxes, raceways, auxiliary gutters, cabinets, equipment cases, or housings shall be effectively closed to afford protection substantially equivalent to the wall of the equipment.

(ii) Conductors shall be racked to provide ready and safe access in underground and subsurface enclosures that persons enter for installation and maintenance.

(iii) Internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces may not be damaged or contaminated by foreign materials such as paint, plaster, cleaners, abrasives, or corrosive residues.

(iv) There shall be no damaged parts that may adversely affect safe operation or mechanical strength of the equipment, such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating.

(8) *Mounting and cooling of equipment.* (i) Electric equipment shall be firmly secured to the surface on which it is mounted.

Note to paragraph (b)(8)(i) of this section: Wooden plugs driven into holes in masonry, concrete, plaster, or similar materials are not considered secure means of fastening electric equipment.

(ii) Electric equipment that depends on the natural circulation of air and convection principles for cooling of exposed surfaces shall be installed so that room airflow over such surfaces is not prevented by walls or by adjacent installed equipment. For equipment designed for floor mounting, clearance between top surfaces and adjacent surfaces shall be provided to dissipate rising warm air.

(iii) Electric equipment provided with ventilating openings shall be installed so that walls or other obstructions do not prevent the free circulation of air through the equipment.

(c) *Electrical connections*—(1) *General.* Because of different characteristics of dissimilar metals:

(i) Devices such as pressure terminal or pressure splicing connectors and soldering lugs shall be identified for the material of the conductor and shall be properly installed and used.

(ii) Conductors of dissimilar metals may not be intermixed in a terminal or splicing connector where physical contact occurs between dissimilar conductors (such as copper and aluminum, copper and copper-clad aluminum, or aluminum and copper-clad aluminum) unless the device is identified for the purpose and conditions of use.

(iii) Materials such as solder, fluxes, inhibitors, and compounds, where employed, shall be suitable for the use and shall be of a type that will not adversely affect the conductors, installation, or equipment.

(2) *Terminals.* (i) Connection of conductors to terminal parts shall ensure a good connection without damaging the conductors and shall be made by means of pressure connectors (including set-screw type), solder lugs, or splices to flexible leads. However, No. 10 or smaller conductors may be connected by means of wire binding screws or studs and nuts having upturned lugs or equivalent.

(ii) Terminals for more than one conductor and terminals used to connect aluminum shall be so identified.

(3) *Splices.* (i) Conductors shall be spliced or joined with splicing devices

identified for the use or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be spliced or joined to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors or with an insulating device identified for the purpose.

(ii) Wire connectors or splicing means installed on conductors for direct burial shall be listed for such use.

(d) *Arcing parts.* Parts of electric equipment that in ordinary operation produce arcs, sparks, flames, or molten metal shall be enclosed or separated and isolated from all combustible material.

(e) *Marking*—(1) *Identification of manufacturer and ratings.* Electric equipment may not be used unless the following markings have been placed on the equipment:

(i) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified; and

(ii) Other markings giving voltage, current, wattage, or other ratings as necessary.

(2) *Durability.* The marking shall be of sufficient durability to withstand the environment involved.

(f) *Disconnecting means and circuits*—(1) *Motors and appliances.* Each disconnecting means required by this subpart for motors and appliances shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident.

(2) *Services, feeders, and branch circuits.* Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident.

(3) *Durability of markings.* The markings required by paragraphs (f)(1) and (f)(2) of this section shall be of sufficient durability to withstand the environment involved.

(4) *Capable of accepting a lock.* Disconnecting means required by this subpart shall be capable of being locked in the open position.

(5) *Marking for series combination ratings.* (i) Where circuit breakers or fuses are applied in compliance with the series combination ratings marked on the equipment by the manufacturer, the equipment enclosures shall be legibly marked in the field to indicate that the equipment has been applied with a series combination rating.

(ii) The marking required by paragraph (f)(5)(i) of this section shall be readily visible and shall state "Caution—Series Combination System Rated _____ Amperes. Identified Replacement Component Required."

(g) *600 volts, nominal, or less.* The following requirements apply to electric equipment operating at 600 volts, nominal, or less to ground:

(1) *Space about electric equipment.* Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

(i) Working space for equipment likely to require examination, adjustment, servicing, or maintenance while energized shall comply with the following dimensions, except as required or permitted elsewhere in this subpart:

(A) The depth of the working space in the direction of access to live parts may not be less than indicated in Table S–1. Distances shall be measured from the live parts if they are exposed or from the enclosure front or opening if they are enclosed.

(B) The width of working space in front of the electric equipment shall be the width of the equipment or 762 mm (30 in.), whichever is greater. In all cases, the working space shall permit at least a 90-degree opening of equipment doors or hinged panels.

(C) The work space shall be clear and extend from the grade, floor or platform to the height required by paragraph (g)(1)(vi) of this section. However, other equipment associated with the electrical installation and located above or below the electric equipment may extend not more than 153 mm (6 in.) beyond the front of the electric equipment.

(ii) Working space required by this standard may not be used for storage. When normally enclosed live parts are exposed for inspection or servicing, the working space, if in a passageway or general open space, shall be suitably guarded.

(iii) At least one entrance of sufficient area shall be provided to give access to the working space about electric equipment.

(iv) For equipment rated 1200 amperes or more and over 1.83 m (6.0 ft) wide, containing overcurrent devices, switching devices, or control devices, there shall be one entrance not less than 610 mm (24 in.) wide and 1.98 m (6.5 ft) high at each end of the working space. Where the location permits a continuous and unobstructed way of exit travel, one means of exit is permitted. Where the working space required by paragraph (g)(1)(i) of this section is doubled, only one entrance to the working space is required, and the entrance shall be located so that the edge of the entrance nearest the equipment is the minimum clear distance given in Table S–1 away from such equipment.

(v) Illumination shall be provided for all working spaces about service equipment, switchboards, panelboards, and motor control centers installed indoors. Additional lighting fixtures are not required where the working space is illuminated by an adjacent light source. In electric equipment rooms, the illumination may not be controlled by automatic means only.

(vi) The minimum headroom of working spaces about service equipment, switchboards, panelboards, or motor control centers shall be as follows:

(A) For installations built before the effective date of the final rule, 1.91 m (6.25 ft); and

(B) For installations built on or after the effective date of the final rule, 1.98 m (6.5 ft), except that where the electrical equipment exceeds 1.98 m (6.5 ft) in height, the minimum headroom may not be less than the height of the equipment.

TABLE S–1.—MINIMUM DEPTH OF CLEAR WORKING SPACE AT ELECTRIC EQUIPMENT, 600 V OR LESS

Nominal voltage to ground	Minimum clear distance for condition [2 3]					
	Condition A		Condition B		Condition C	
	m	ft	m	ft	m	ft
0—150	[1] 0.9	[1] 3.0	[1] 0.9	[1] 3.0	0.9	3.0
151—600	[1] 0.9	[1] 3.0	1.0	3.5	1.2	4.0

Notes to Table S–1:

[1] Minimum clear distances may be 0.7 m (2.5 ft) for installations built before April 16, 1981.

[2] Conditions A, B, and C are as follows:
Condition A—Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts.
Condition B—Exposed live parts on one side and grounded parts on the other side.
Condition C—Exposed live parts on both sides of the work space (not guarded as provided in Condition A) with the operator between.
[3] Working space is not required in back of assemblies such as dead-front switchboards or motor control centers where there are no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on deenergized parts on the back of enclosed equipment, a minimum working space of 762 mm (30 in.) horizontally shall be provided.

(vii) Switchboards, panelboards, and distribution boards installed for the control of light and power circuits, and motor control centers shall be located in dedicated spaces and protected from damage.

(A) For indoor installation, the dedicated space shall comply with the following:

(*1*) The space equal to the width and depth of the equipment and extending from the floor to a height of 1.83 m (6.0 ft) above the equipment or to the structural ceiling, whichever is lower, shall be dedicated to the electrical installation. Unless isolated from equipment by height or physical enclosures or covers that will afford adequate mechanical protection from vehicular traffic or accidental contact by unauthorized personnel or that complies with paragraph (g)(1)(vii)(A)(2) of this section, piping, ducts, or equipment foreign to the electrical installation may not be located in this area.

(*2*) The space equal to the width and depth of the equipment shall be kept clear of foreign systems unless protection is provided to avoid damage from condensation, leaks, or breaks in such foreign systems. This area shall extend from the top of the electric equipment to the structural ceiling.

(*3*) Sprinkler protection is permitted for the dedicated space where the piping complies with this section.

(*4*) Control equipment that by its very nature or because of other requirements in this subpart must be adjacent to or within sight of its operating machinery is permitted in the dedicated space.

Note to paragraph (g)(1)(vii)(A) of this section: A dropped, suspended, or similar ceiling that does not add strength to the building structure is not considered a structural ceiling.

(B) Outdoor electric equipment shall be installed in suitable enclosures and shall be protected from accidental contact by unauthorized personnel, or by vehicular traffic, or by accidental spillage or leakage from piping systems. No architectural appurtenance or other equipment may be located in the working space required by paragraph (g)(1)(i) of this section.

(2) *Guarding of live parts.* (i) Except as elsewhere required or permitted by this standard, live parts of electric equipment operating at 50 volts or more shall be guarded against accidental contact by use of approved cabinets or other forms of approved enclosures or by any of the following means:

(A) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.

(B) By suitable permanent, substantial partitions or screens so arranged so that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.

(C) By placement on a suitable balcony, gallery, or platform so elevated and otherwise located as to prevent access by unqualified persons.

(D) By elevation of 2.44 m (8.0 ft) or more above the floor or other working surface.

(ii) In locations where electric equipment is likely to be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(iii) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(h) *Over 600 volts, nominal*—(1) *General.* Conductors and equipment used on circuits exceeding 600 volts, nominal, shall comply with all applicable provisions of the paragraphs (a) through (g) of this section and with the following provisions, which supplement or modify the preceding requirements. However, paragraphs (h)(2), (h)(3), and (h)(4) of this section do not apply to the equipment on the supply side of the service point.

(2) *Enclosure for electrical installations.* (i) Electrical installations in a vault, room, or closet or in an area surrounded by a wall, screen, or fence, access to which is controlled by lock and key or other approved means, are considered to be accessible to qualified persons only. The type of enclosure used in a given case shall be designed and constructed according to the hazards associated with the installation.

(ii) For installations other than equipment described in paragraph (h)(2)(v) of this section, a wall, screen, or fence shall be used to enclose an outdoor electrical installation to deter access by persons who are not qualified. A fence may not be less than 2.13 m (7.0 ft) in height or a combination of 1.80 m (6.0 ft) or more of fence fabric and a 305-mm (1-ft) or more extension utilizing three or more strands of barbed wire or equivalent.

(iii) The following requirements apply to indoor installations that are accessible to other than qualified persons:

(A) The installations shall be made with metal-enclosed equipment or shall be enclosed in a vault or in an area to which access is controlled by a lock.

(B) Metal-enclosed switchgear, unit substations, transformers, pull boxes, connection boxes, and other similar associated equipment shall be marked with appropriate caution signs.

(C) Openings in ventilated dry-type transformers and similar openings in other equipment shall be designed so that foreign objects inserted through these openings will be deflected from energized parts.

(iv) Outdoor electrical installations having exposed live parts shall be accessible to qualified persons only.

(v) The following requirements apply to outdoor enclosed equipment accessible to unqualified employees:

(A) Ventilating or similar openings in equipment shall be so designed that foreign objects inserted through these openings will be deflected from energized parts.

(B) Where exposed to physical damage from vehicular traffic, suitable guards shall be provided.

(C) Nonmetallic or metal-enclosed equipment located outdoors and accessible to the general public shall be designed so that exposed nuts or bolts cannot be readily removed, permitting access to live parts.

(D) Where nonmetallic or metal-enclosed equipment is accessible to the general public and the bottom of the enclosure is less than 2.44 m (8.0 ft) above the floor or grade level, the enclosure door or hinged cover shall be kept locked.

(E) Except for underground box covers that weigh over 45.4 kg (100 lb), doors and covers of enclosures used solely as pull boxes, splice boxes, or junction boxes shall be locked, bolted, or screwed on.

(3) *Work space about equipment.* Sufficient space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment. Where energized parts are exposed, the minimum clear work space may not be less than 1.98 m (6.5 ft) high (measured vertically from the floor or platform) or less than 914 mm (3.0 ft) wide (measured parallel to the equipment). The depth shall be as required in paragraph (h)(5)(i) of this section. In all cases, the work space shall be adequate to permit at least a 90-degree opening of doors or hinged panels.

(4) *Entrance and access to work space.* (i) At least one entrance not less than 610 mm (24 in.) wide and 1.98 m (6.5 ft) high shall be provided to give access to the working space about electric equipment.

(A) On switchboard and control panels exceeding 1.83 m (6.0 ft) in width, there shall be one entrance at each end of such boards unless the location of the switchboards and control panels permits a continuous and unobstructed way of exit travel, or unless the work space required in paragraph (h)(5)(i) of this section is doubled.

(B) Where one entrance to the working space is permitted under the conditions described in paragraph (h)(4)(i)(A) of this section, the entrance shall be located so that the edge of the entrance nearest the switchboards and control panels is the minimum clear distance given in Table S–2 away from such equipment.

(C) Where bare energized parts at any voltage or insulated energized parts above 600 volts, nominal, to ground are located adjacent to such entrance, they shall be suitably guarded.

(ii) Permanent ladders or stairways shall be provided to give safe access to the working space around electric equipment installed on platforms, balconies, mezzanine floors, or in attic or roof rooms or spaces.

(5) *Working space and guarding.* (i) Except as elsewhere required or permitted in this subpart, the minimum clear working space in the direction of access to live parts of electric equipment may not be less than specified in Table S–2. Distances shall be measured from the live parts, if they are exposed, or from the enclosure front or opening, if they are enclosed.

(ii) If switches, cutouts, or other equipment operating at 600 volts, nominal, or less, are installed in a room or enclosure where there are exposed live parts or exposed wiring operating at over 600 volts, nominal, the high-voltage equipment shall be effectively separated from the space occupied by the low-voltage equipment by a suitable partition, fence, or screen. However, switches or other equipment operating at 600 volts, nominal, or less, and serving only equipment within the high-voltage vault, room, or enclosure may be installed in the high-voltage enclosure, room, or vault if accessible to qualified persons only.

(iii) The following requirements apply to the entrances to all buildings, rooms, or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal:

(A) The entrances shall be kept locked unless they are under the observation of a qualified person at all times.

(B) Permanent and conspicuous warning signs shall be provided, reading substantially as follows:

"DANGER—HIGH VOLTAGE—KEEP OUT."

(iv) Illumination shall be provided for all working spaces about electric equipment.

(A) The lighting outlets shall be arranged so that persons changing lamps or making repairs on the lighting system will not be endangered by live parts or other equipment.

(B) The points of control shall be located so that persons are prevented from contacting any live part or moving part of the equipment while turning on the lights.

(v) Unguarded live parts above working space shall be maintained at elevations not less than specified in Table S–3.

(vi) Pipes or ducts that are foreign to the electrical installation and that require periodic maintenance or whose malfunction would endanger the operation of the electrical system may not be located in the vicinity of service equipment, metal-enclosed power switchgear, or industrial control assemblies. Protection shall be provided where necessary to avoid damage from condensation leaks and breaks in such foreign systems.

Note to paragraph (h)(5)(vi) of this section: Piping and other facilities are not considered foreign if provided for fire protection of the electrical installation.

TABLE S–2.—MINIMUM DEPTH OF CLEAR WORKING SPACE AT ELECTRIC EQUIPMENT, OVER 600 V

Nominal voltage to ground	Minimum clear distance for condition [2] [3]					
	Condition A		Condition B		Condition C	
	m	ft	m	ft	m	Ft
601–2500 V	0.9	3.0	1.2	4.0	1.5	5.0
2501–9000 V	1.2	4.0	1.5	5.0	1.8	6.0
9001 V–25 kV	1.5	5.0	1.8	6.0	2.8	9.0
Over 25–75 kV [1]	1.8	6.0	2.5	8.0	3.0	10.0
Above 75 kV [1]	2.5	8.0	3.0	10.0	3.7	12.0

Notes to Table S–2:

[1] Minimum depth of clear working space in front of electric equipment with a nominal voltage to ground above 25,000 volts may be the same as that for 25,000 volts under Conditions A, B, and C for installations built before April 16, 1981.

[2] Conditions A, B, and C are as follows:

Condition A—Exposed live parts on one side and no live or grounded parts on the other side of the working space, or exposed live parts on both sides effectively guarded by suitable wood or other insulating material. Insulated wire or insulated busbars operating at not over 300 volts are not considered live parts.

Condition B—Exposed live parts on one side and grounded parts on the other side. Concrete, brick, and tile walls are considered as grounded surfaces.

Condition C—Exposed live parts on both sides of the work space (not guarded as provided in Condition A) with the operator between.

[3] Working space is not required in back of equipment such as dead-front switchboards or control assemblies that has no renewable or adjustable parts (such as fuses or switches) on the back and where all connections are accessible from locations other than the back. Where rear access is required to work on the deenergized parts on the back of enclosed equipment, a minimum working space 762 mm (30 in.) horizontally shall be provided.

TABLE S–3.—ELEVATION OF UNGUARDED LIVE PARTS ABOVE WORKING SPACE

Nominal voltage between phases	Elevation	
	m	ft
601–7500 V	2.8[1]	9.0[1]
7501 V–35 kV	2.8	9.0
Over 35 kV	2.8 + 9.5 mm/kV over 35 kV	9.0 + 0.37 in./kV over 35 kV

[1] The minimum elevation may be 2.6 m (8.5 ft) for installations built before the effective date of the standard.

§ 1910.304 Wiring design and protection.

(a) *Use and identification of grounded and grounding conductors*—(1) *Identification of conductors.* (i) A conductor used as a grounded conductor shall be identifiable and distinguishable from all other conductors.

(ii) A conductor used as an equipment grounding conductor shall be identifiable and distinguishable from all other conductors.

(2) *Polarity of connections.* No grounded conductor may be attached to any terminal or lead so as to reverse designated polarity.

(3) *Use of grounding terminals and devices.* A grounding terminal or grounding-type device on a receptacle, cord connector, or attachment plug may not be used for purposes other than grounding.

(b) *Branch circuits*—(1) *Identification of multiwire branch circuits.* Where more than one nominal voltage system exists in a building containing multiwire branch circuits, each ungrounded conductor of a multiwire branch circuit, where accessible, shall be identified by phase and system. The means of identification shall be permanently posted at each branch-circuit panelboard.

(2) *Receptacles and cord connectors.* (i) Receptacles installed on 15- and 20-ampere branch circuits shall be of the grounding type except as permitted for replacement receptacles in paragraph (b)(2)(iv) of this section. Grounding-type receptacles shall be installed only on circuits of the voltage class and current for which they are rated, except as provided in Table S–4 and Table S–5.

(ii) Receptacles and cord connectors having grounding contacts shall have those contacts effectively grounded except for receptacles mounted on portable and vehicle-mounted generators in accordance with paragraph (g)(2) of this section and replacement receptacles installed in accordance with paragraph (b)(2)(iv) of this section.

(iii) The grounding contacts of receptacles and cord connectors shall be grounded by connection to the equipment grounding conductor of the circuit supplying the receptacle or cord connector. The branch circuit wiring method shall include or provide an equipment grounding conductor to which the grounding contacts of the receptacle or cord connector shall be connected.

(iv) Replacement of receptacles shall comply with the following requirements:

(A) Where a grounding means exists in the receptacle enclosure or a grounding conductor is installed, grounding-type receptacles shall be used and shall be connected to the grounding means or conductor.

(B) Ground-fault circuit-interrupter protected receptacles shall be provided where replacements are made at receptacle outlets that are required to be so protected elsewhere in this subpart.

(C) Where a grounding means does not exist in the receptacle enclosure, the installation shall comply with one of the following provisions:

(*1*) A nongrounding-type receptacle may be replaced with another nongrounding-type receptacle; or

(*2*) A nongrounding-type receptacle may be replaced with a ground-fault circuit-interrupter-type of receptacle that is marked "No Equipment Ground;" an equipment grounding conductor may not be connected from the ground-fault circuit-interrupter-type receptacle to any outlet supplied from the ground-fault circuit-interrupter receptacle; or

(*3*) A nongrounding-type receptacle may be replaced with a grounding-type receptacle where supplied through a ground-fault circuit-interrupter; the replacement receptacle shall be marked "GFCI Protected" and "No Equipment Ground;" an equipment grounding conductor may not be connected to such grounding-type receptacles.

(v) Receptacles connected to circuits having different voltages, frequencies, or types of current (ac or dc) on the same premises shall be of such design that the attachment plugs used on these circuits are not interchangeable.

(3) *Identification of ungrounded conductors.* Where more than one nominal voltage system exists in a building, each ungrounded system conductor shall be identified by phase and system. This means of identification shall be permanently posted at each branch-circuit panelboard.

(4) *Ground-fault circuit interrupter protection for personnel.* (i) All 125-volt, single-phase, 15- and 20-ampere receptacles installed in bathrooms or on rooftops shall have ground-fault circuit-interrupter protection for personnel.

(ii) The following requirements apply to temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar activities:

(A) All 125-volt, single-phase, 15- and 20- and 30-ampere receptacle outlets that are not part of the permanent wiring of the building or structure and that are in use by personnel shall have ground-fault circuit-interrupter protection for personnel. However, receptacles on a 2-wire, single-phase portable or vehicle-mounted generator rated not more than 5 kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, are permitted without ground-fault circuit-interrupter protection for personnel.

Note 1 to paragraph (b)(4)(ii)(A) of this section: A cord connector on an extension cord set is considered to be a receptacle outlet if the cord set is used for temporary electric power.

Note 2 to paragraph (b)(4)(ii)(A) of this section: Cord sets and devices incorporating listed ground-fault circuit-interrupter protection for personnel are acceptable forms of protection.

(B) Receptacles other than 125 volt, single-phase, 15-, 20-, and 30-ampere receptacles that are not part of the permanent wiring of the building or structure and that are in use by personnel shall have ground-fault circuit-interrupter protection for personnel.

(5) *Outlet devices.* Outlet devices shall have an ampere rating not less than the load to be served and shall comply with the following provisions:

(i) Where connected to a branch circuit having a rating in excess of 20 amperes, lampholders shall be of the heavy-duty type. A heavy-duty lampholder shall have a rating of not less than 660 watts if of the admedium

type and not less than 750 watts if of any other type.

(ii) Receptacle outlets shall comply with the following provisions:

(A) A single receptacle installed on an individual branch circuit shall have an ampere rating of not less than that of the branch circuit.

(B) Where connected to a branch circuit supplying two or more receptacles or outlets, a receptacle may not supply a total cord- and plug-connected load in excess of the maximum specified in Table S–4.

(C) Where connected to a branch circuit supplying two or more receptacles or outlets, receptacle ratings shall conform to the values listed in Table S–5; or, where larger than 50 amperes, the receptacle rating may not be less than the branch-circuit rating. However, receptacles of cord- and plug-connected arc welders may have ampere ratings not less than the minimum branch-circuit conductor ampacity.

(6) *Cord connections.* A receptacle outlet shall be installed wherever flexible cords with attachment plugs are used. Where flexible cords are permitted to be permanently connected, receptacles may be omitted.

TABLE S–4.—MAXIMUM CORD- AND PLUG-CONNECTED LOAD TO RECEPTACLE

Circuit rating (amperes)	Receptacle rating (amperes)	Maximum load (amperes)
15 or 20	15	12
20	20	16
30	30	24

TABLE S–5.—RECEPTACLE RATINGS FOR VARIOUS SIZE CIRCUITS

Circuit rating (amperes)	Receptacle rating (amperes)
15	Not over 15.
20	15 or 20.
30	30.
40	40 or 50.
50	50.

(c) *Outside conductors, 600 volts, nominal, or less.* The following requirements apply to branch-circuit, feeder, and service conductors rated 600 volts, nominal, or less and run outdoors as open conductors.

(1) *Conductors on poles.* Conductors on poles shall have a separation of not less than 305 mm (1.0 ft) where not placed on racks or brackets. Conductors supported on poles shall provide a horizontal climbing space not less than the following:

(i) Power conductors below communication conductors—762 mm (30 in.);

(ii) Power conductors alone or above communication conductors:

300 volts or less—610 mm (24 in.),

Over 300 volts—762 mm (30 in.);

(iii) Communication conductors below power conductors—same as power conductors;

(iv) Communications conductors alone—no requirement.

(2) *Clearance from ground.* Open conductors, open multiconductor cables, and service-drop conductors of not over 600 volts, nominal, shall conform to the minimum clearances specified in Table S–6.

TABLE S–6.—CLEARANCES FROM GROUND

Distance	Installations built before the effective date of the final rule		Installations built on or after the effective date of the final rule	
	Maximum voltage	Conditions	Voltage to ground	Conditions
3.05 m (10.0 ft)	< 600 V	Above finished grade or sidewalks, or from any platform or projection from which they might be reached. (If these areas are accessible to other than pedestrian traffic, then one of the other conditions applies.).	< 150 V	Above finished grade or sidewalks, or from any platform or projection from which they might be reached. (If these areas are accessible to other than pedestrian traffic, then one of the other conditions applies.)
3.66 m (12.0 ft)	< 600 V	Over areas, other than public streets, alleys, roads, and driveways, subject to vehicular traffic other than truck traffic.	< 300 V	Over residential property and driveways. Over commercial areas subject to pedestrian traffic or to vehicular traffic other than truck traffic (This category includes conditions covered under the 3.05-m (10.0-ft) category where the voltage exceeds 150 V.)
4.57 m (15.0 ft)	< 600 V	Over areas, other than public streets, alleys, roads, and driveways, subject to truck traffic.	301 to 600 V	Over residential property and driveways Over commercial areas subject to pedestrian traffic or to vehicular traffic other than truck traffic. (This category includes conditions covered under the 3.05-m (10.0-ft) category where the voltage exceeds 300 V.)
5.49 m (18.0 ft)	< 600 V	Over public streets, alleys, roads, and driveways.	< 600 V	Over public streets, alleys, roads, and driveways. Over commercial areas subject to truck traffic. Other land traversed by vehicles, including land used for cultivating or grazing and forests and orchards.

(3) *Clearance from building openings.* (i) Service conductors installed as open conductors or multiconductor cable without an overall outer jacket shall have a clearance of not less than 914 mm (3.0 ft) from windows that are designed to be opened, doors, porches, balconies, ladders, stairs, fire escapes, and similar locations. However, conductors that run above the top level of a window may be less than 914 mm (3.0 ft) from the window. Vertical clearance of final spans above, or within 914 mm (3.0 ft) measured horizontally of, platforms, projections, or surfaces from which they might be reached shall be maintained in accordance with paragraph (c)(2) of this section.

(ii) Overhead service conductors may not be installed beneath openings through which materials may be moved, such as openings in farm and commercial buildings, and may not be installed where they will obstruct entrance to these building openings.

(4) *Above roofs.* Overhead spans of open conductors and open multiconductor cables shall have a vertical clearance of not less than 2.44 m (8.0 ft) above the roof surface. The vertical clearance above the roof level shall be maintained for a distance not less than 914 mm (3.0 ft) in all directions from the edge of the roof.

(i) The area above a roof surface subject to pedestrian or vehicular traffic shall have a vertical clearance from the roof surface in accordance with the clearance requirements of paragraph (c)(2) of this section.

(ii) A reduction in clearance to 914 mm (3.0 ft) is permitted where the voltage between conductors does not exceed 300 and the roof has a slope of 102 mm (4 in.) in 305 mm (12 in.) or greater.

(iii) A reduction in clearance above only the overhanging portion of the roof to not less than 457 mm (18 in.) is permitted where the voltage between conductors does not exceed 300 if (1) the conductors do not pass above the roof overhang for a distance of more than 1.83 m (6.0 ft), 1.22 m (4.0 ft) horizontally, and (2) the conductors are terminated at a through-the-roof raceway or approved support.

(iv) The requirement for maintaining a vertical clearance of 914 mm (3.0 ft) from the edge of the roof does not apply to the final conductor span where the conductors are attached to the side of a building.

(d) *Location of outdoor lamps.* Lamps for outdoor lighting shall be located below all energized conductors, transformers, or other electric equipment, unless such equipment is controlled by a disconnecting means that can be locked in the open position, or unless adequate clearances or other safeguards are provided for relamping operations.

(e) *Services*—(1) *Disconnecting means.* (i) Means shall be provided to disconnect all conductors in a building or other structure from the service-entrance conductors. The service disconnecting means shall plainly indicate whether it is in the open or closed position and shall be installed at a readily accessible location nearest the point of entrance of the service-entrance conductors.

(ii) Each service disconnecting means shall simultaneously disconnect all ungrounded conductors.

(iii) Each service disconnecting means shall be suitable for the prevailing conditions.

(2) *Services over 600 volts, nominal.* The following additional requirements apply to services over 600 volts, nominal.

(i) Service-entrance conductors installed as open wires shall be guarded to make them accessible only to qualified persons.

(ii) Signs warning of high voltage shall be posted where unqualified employees might come in contact with live parts.

(f) *Overcurrent protection*—(1) *600 volts, nominal, or less.* The following requirements apply to overcurrent protection of circuits rated 600 volts, nominal, or less.

(i) Conductors and equipment shall be protected from overcurrent in accordance with their ability to safely conduct current.

(ii) Except for motor running overload protection, overcurrent devices may not interrupt the continuity of the grounded conductor unless all conductors of the circuit are opened simultaneously.

(iii) A disconnecting means shall be provided on the supply side of all fuses in circuits over 150 volts to ground and cartridge fuses in circuits of any voltage where accessible to other than qualified persons so that each individual circuit containing fuses can be independently disconnected from the source of power. However, a current-limiting device without a disconnecting means is permitted on the supply side of the service disconnecting means. In addition, a single disconnecting means is permitted on the supply side of more than one set of fuses as permitted by the exception to § 1910.305(j)(4)(vi), for group operation of motors and for fixed electric space-heating equipment.

(iv) Overcurrent devices shall be readily accessible to each employee or authorized building management personnel. These overcurrent devices may not be located where they will be exposed to physical damage or in the vicinity of easily ignitable material.

(v) Fuses and circuit breakers shall be so located or shielded that employees will not be burned or otherwise injured by their operation. Handles or levers of circuit breakers, and similar parts that may move suddenly in such a way that persons in the vicinity are likely to be injured by being struck by them, shall be guarded or isolated.

(vi) Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.

(vii) Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position.

(viii) Circuit breakers used as switches in 120-volt and 277-volt, fluorescent lighting circuits shall be listed and marked "SWD."

(ix) A circuit breaker with a straight voltage rating, such as 240 V or 480 V, may only be installed in a circuit in which the nominal voltage between any two conductors does not exceed the circuit breaker's voltage rating. A two-pole circuit breaker may not be used for protecting a 3-phase, corner-grounded delta circuit unless the circuit breaker is marked 1φ–3φ to indicate such suitability. A circuit breaker with a slash rating, such as 120/240 V or 480Y/277 V, may only be installed in a circuit where the nominal voltage of any conductor to ground does not exceed the lower of the two values of the circuit breaker's voltage rating and the nominal voltage between any two conductors does not exceed the higher value of the circuit breaker's voltage rating.

(2) *Feeders and branch circuits over 600 volts, nominal.* The following requirements apply to feeders and branch circuits energized at more than 600 volts, nominal:

(i) Feeder and branch-circuit conductors shall have overcurrent protection in each ungrounded conductor located at the point where the conductor receives its supply or at a location in the circuit determined under engineering supervision.

(A) Circuit breakers used for overcurrent protection of three-phase circuits shall have a minimum of three overcurrent relays operated from three current transformers. On three-phase, three-wire circuits, an overcurrent relay in the residual circuit of the current transformers may replace one of the phase relays. An overcurrent relay, operated from a current transformer that links all phases of a three-phase, three-wire circuit, may replace the residual relay and one other phase-conductor

current transformers. Where the neutral is not grounded on the load side of the circuit, the current transformer may link all three phase conductors and the grounded circuit conductor (neutral).

(B) If fuses are used for overcurrent protection, a fuse shall be connected in series with each ungrounded conductor.

(ii) Each protective device shall be capable of detecting and interrupting all values of current that can occur at its location in excess of its trip setting or melting point.

(iii) The operating time of the protective device, the available short-circuit current, and the conductor used shall be coordinated to prevent damaging or dangerous temperatures in conductors or conductor insulation under short-circuit conditions.

(iv) The following additional requirements apply to feeders only:

(A) The continuous ampere rating of a fuse may not exceed three times the ampacity of the conductors. The long-time trip element setting of a breaker or the minimum trip setting of an electronically actuated fuse may not exceed six times the ampacity of the conductor. For fire pumps, conductors may be protected for short circuit only.

(B) Conductors tapped to a feeder may be protected by the feeder overcurrent device where that overcurrent device also protects the tap conductor.

(g) *Grounding.* Paragraphs (g)(1) through (g)(8) of this section contain grounding requirements for systems, circuits, and equipment.

(1) *Systems to be grounded.* Systems that supply premises wiring shall be grounded as follows:

(i) All 3-wire dc systems shall have their neutral conductor grounded.

(ii) Two-wire dc systems operating at over 50 volts through 300 volts between conductors shall be grounded unless:

(A) They supply only industrial equipment in limited areas and are equipped with a ground detector; or

(B) They are rectifier-derived from an ac system complying with paragraphs (g)(1)(iii), (g)(1)(iv), and (g)(1)(v) of this section; or

(C) They are fire-alarm circuits having a maximum current of 0.030 amperes.

(iii) AC circuits of less than 50 volts shall be grounded if they are installed as overhead conductors outside of buildings or if they are supplied by transformers and the transformer primary supply system is ungrounded or exceeds 150 volts to ground.

(iv) AC systems of 50 volts to 1000 volts shall be grounded under any of the following conditions, unless exempted by paragraph (g)(1)(v) of this section:

(A) If the system can be so grounded that the maximum voltage to ground on the ungrounded conductors does not exceed 150 volts;

(B) If the system is nominally rated three-phase, four-wire wye connected in which the neutral is used as a circuit conductor;

(C) If the system is nominally rated three-phase, four-wire delta connected in which the midpoint of one phase is used as a circuit conductor; or

(D) If a service conductor is uninsulated.

(v) AC systems of 50 volts to 1000 volts are not required to be grounded under any of the following conditions:

(A) If the system is used exclusively to supply industrial electric furnaces for melting, refining, tempering, and the like;

(B) If the system is separately derived and is used exclusively for rectifiers supplying only adjustable speed industrial drives;

(C) If the system is separately derived and is supplied by a transformer that has a primary voltage rating less than 1000 volts, provided all of the following conditions are met:

(1) The system is used exclusively for control circuits,

(2) The conditions of maintenance and supervision ensure that only qualified persons will service the installation,

(3) Continuity of control power is required, and

(4) Ground detectors are installed on the control system;

(D) If the system is an isolated power system that supplies circuits in health care facilities; or

(E) If the system is a high-impedance grounded neutral system in which a grounding impedance, usually a resistor, limits the ground-fault current to a low value for 3-phase ac systems of 480 volts to 1000 volts provided all of the following conditions are met:

(1) The conditions of maintenance and supervision ensure that only qualified persons will service the installation,

(2) Continuity of power is required,

(3) Ground detectors are installed on the system, and

(4) Line-to-neutral loads are not served.

(2) *Portable and vehicle-mounted generators.* (i) The frame of a portable generator need not be grounded and may serve as the grounding electrode for a system supplied by the generator under the following conditions:

(A) The generator supplies only equipment mounted on the generator or cord- and plug-connected equipment through receptacles mounted on the generator, or both; and

(B) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame.

(ii) The frame of a vehicle need not be grounded and may serve as the grounding electrode for a system supplied by a generator located on the vehicle under the following conditions:

(A) The frame of the generator is bonded to the vehicle frame; and

(B) The generator supplies only equipment located on the vehicle and cord- and plug-connected equipment through receptacles mounted on the vehicle; and

(C) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame; and

(D) The system complies with all other provisions of paragraph (g) of this section.

(iii) A neutral conductor shall be bonded to the generator frame where the generator is a component of a separately derived system.

(3) *Grounding connections.* (i) For a grounded system, a grounding electrode conductor shall be used to connect both the equipment grounding conductor and the grounded circuit conductor to the grounding electrode. Both the equipment grounding conductor and the grounding electrode conductor shall be connected to the grounded circuit conductor on the supply side of the service disconnecting means or on the supply side of the system disconnecting means or overcurrent devices if the system is separately derived.

(ii) For an ungrounded service-supplied system, the equipment grounding conductor shall be connected to the grounding electrode conductor at the service equipment. For an ungrounded separately derived system, the equipment grounding conductor shall be connected to the grounding electrode conductor at, or ahead of, the system disconnecting means or overcurrent devices.

(iii) On extensions of existing branch circuits that do not have an equipment grounding conductor, grounding-type receptacles may be grounded to a grounded cold water pipe near the equipment.

(4) *Grounding path.* The path to ground from circuits, equipment, and enclosures shall be permanent and continuous.

(5) *Supports, enclosures, and equipment to be grounded.* (i) Metal cable trays, metal raceways, and metal enclosures for conductors shall be grounded, except that:

(A) Metal enclosures such as sleeves that are used to protect cable assemblies

from physical damage need not be grounded; and

(B) Metal enclosures for conductors added to existing installations of open wire, knob-and-tube wiring, and nonmetallic-sheathed cable need not be grounded if all of the following conditions are met:

(1) Runs are less than 7.62 meters (25.0 ft);

(2) Enclosures are free from probable contact with ground, grounded metal, metal laths, or other conductive materials; and

(3) Enclosures are guarded against employee contact.

(ii) Metal enclosures for service equipment shall be grounded.

(iii) Frames of electric ranges, wall-mounted ovens, counter-mounted cooking units, clothes dryers, and metal outlet or junction boxes that are part of the circuit for these appliances shall be grounded.

(iv) Exposed noncurrent-carrying metal parts of fixed equipment that may become energized shall be grounded under any of the following conditions:

(A) If within 2.44 m (8 ft) vertically or 1.52 m (5 ft) horizontally of ground or grounded metal objects and subject to employee contact;

(B) If located in a wet or damp location and not isolated;

(C) If in electrical contact with metal;

(D) If in a hazardous (classified) location;

(E) If supplied by a metal-clad, metal-sheathed, or grounded metal raceway wiring method; or

(F) If equipment operates with any terminal at over 150 volts to ground.

(v) Notwithstanding the provisions of paragraph (g)(5)(iv) of this section, exposed noncurrent-carrying metal parts of the following types of fixed equipment need not be grounded:

(A) Enclosures for switches or circuit breakers used for other than service equipment and accessible to qualified persons only;

(B) Electrically heated appliances that are permanently and effectively insulated from ground;

(C) Distribution apparatus, such as transformer and capacitor cases, mounted on wooden poles, at a height exceeding 2.44 m (8.0 ft) above ground or grade level; and

(D) Listed equipment protected by a system of double insulation, or its equivalent, and distinctively marked as such.

(vi) Exposed noncurrent-carrying metal parts of cord- and plug-connected equipment that may become energized shall be grounded under any of the following conditions:

(A) If in hazardous (classified) locations (*see* § 1910.307);

(B) If operated at over 150 volts to ground, except for guarded motors and metal frames of electrically heated appliances if the appliance frames are permanently and effectively insulated from ground;

(C) If the equipment is of the following types:

(1) Refrigerators, freezers, and air conditioners;

(2) Clothes-washing, clothes-drying and dishwashing machines, sump pumps, and electric aquarium equipment;

(3) Hand-held motor-operated tools, stationary and fixed motor-operated tools, and light industrial motor-operated tools;

(4) Motor-operated appliances of the following types: hedge clippers, lawn mowers, snow blowers, and wet scrubbers;

(5) Cord- and plug-connected appliances used in damp or wet locations, or by employees standing on the ground or on metal floors or working inside of metal tanks or boilers;

(6) Portable and mobile X-ray and associated equipment;

(7) Tools likely to be used in wet and conductive locations; and

(8) Portable hand lamps.

(vii) Notwithstanding the provisions of paragraph (g)(5)(vi) of this section, the following equipment need not be grounded:

(A) Tools likely to be used in wet and conductive locations if supplied through an isolating transformer with an ungrounded secondary of not over 50 volts, and

(B) Listed or labeled portable tools and appliances if protected by an approved system of double insulation, or its equivalent, and distinctively marked.

(6) *Nonelectrical equipment.* The metal parts of the following nonelectrical equipment shall be grounded: Frames and tracks of electrically operated cranes and hoists; frames of nonelectrically driven elevator cars to which electric conductors are attached; hand-operated metal shifting ropes or cables of electric elevators; and metal partitions, grill work, and similar metal enclosures around equipment of over 750 volts between conductors.

(7) *Methods of grounding fixed equipment.* (i) Noncurrent-carrying metal parts of fixed equipment, if required to be grounded by this subpart, shall be grounded by an equipment grounding conductor that is contained within the same raceway, cable, or cord, or runs with or encloses the circuit conductors. For dc circuits only, the equipment grounding conductor may be run separately from the circuit conductors.

(ii) Electric equipment is considered to be effectively grounded if it is secured to, and in electrical contact with, a metal rack or structure that is provided for its support and the metal rack or structure is grounded by the method specified for the noncurrent-carrying metal parts of fixed equipment in paragraph (g)(7)(i) of this section. Metal car frames supported by metal hoisting cables attached to or running over metal sheaves or drums of grounded elevator machines are also considered to be effectively grounded. For installations made before April 16, 1981, only, electric equipment is also considered to be effectively grounded if it is secured to, and in metallic contact with, the grounded structural metal frame of a building.

(8) *Grounding of systems and circuits of 1000 volts and over (high voltage).* If high voltage systems are grounded, they shall comply with all applicable provisions of paragraphs (g)(1) through (g)(7) of this section as supplemented and modified by the following requirements:

(i) Systems supplying portable or mobile high voltage equipment, other than substations installed on a temporary basis, shall comply with the following:

(A) The system shall have its neutral grounded through an impedance. If a delta-connected high voltage system is used to supply the equipment, a system neutral shall be derived.

(B) Exposed noncurrent-carrying metal parts of portable and mobile equipment shall be connected by an equipment grounding conductor to the point at which the system neutral impedance is grounded.

(C) Ground-fault detection and relaying shall be provided to automatically deenergize any high voltage system component that has developed a ground fault. The continuity of the equipment grounding conductor shall be continuously monitored so as to deenergize automatically the high voltage feeder to the portable equipment upon loss of continuity of the equipment grounding conductor.

(D) The grounding electrode to which the portable equipment system neutral impedance is connected shall be isolated from and separated in the ground by at least 6.1 m (20.0 ft) from any other system or equipment grounding electrode, and there shall be no direct connection between the grounding electrodes, such as buried pipe, fence, and so forth.

(ii) All noncurrent-carrying metal parts of portable equipment and fixed equipment, including their associated fences, housings, enclosures, and supporting structures, shall be grounded. However, equipment that is guarded by location and isolated from ground need not be grounded. Additionally, pole-mounted distribution apparatus at a height exceeding 2.44 m (8.0 ft) above ground or grade level need not be grounded.

§ 1910.305 Wiring methods, components, and equipment for general use.

(a) *Wiring methods.* The provisions of this section do not apply to conductors that are an integral part of factory-assembled equipment.

(1) *General requirements.* (i) Metal raceways, cable trays, cable armor, cable sheath, enclosures, frames, fittings, and other metal noncurrent-carrying parts that are to serve as grounding conductors, with or without the use of supplementary equipment grounding conductors, shall be effectively bonded where necessary to ensure electrical continuity and the capacity to conduct safely any fault current likely to be imposed on them. Any nonconductive paint, enamel, or similar coating shall be removed at threads, contact points, and contact surfaces or be connected by means of fittings designed so as to make such removal unnecessary.

(ii) Where necessary for the reduction of electrical noise (electromagnetic interference) of the grounding circuit, an equipment enclosure supplied by a branch circuit may be isolated from a raceway containing circuits supplying only that equipment by one or more listed nonmetallic raceway fittings located at the point of attachment of the raceway to the equipment enclosure. The metal raceway shall be supplemented by an internal insulated equipment grounding conductor installed to ground the equipment enclosure.

(iii) No wiring systems of any type may be installed in ducts used to transport dust, loose stock, or flammable vapors. No wiring system of any type may be installed in any duct used for vapor removal or for ventilation of commercial-type cooking equipment, or in any shaft containing only such ducts.

(2) *Temporary wiring.* Except as specifically modified in this paragraph, all other requirements of this subpart for permanent wiring shall also apply to temporary wiring installations.

(i) Temporary electrical power and lighting installations of 600 volts, nominal, or less may be used only as follows:

(A) During and for remodeling, maintenance, or repair of buildings, structures, or equipment, and similar activities;

(B) For a period not to exceed 90 days for Christmas decorative lighting, carnivals, and similar purposes; or

(C) For experimental or development work, and during emergencies.

(ii) Temporary wiring shall be removed immediately upon completion of the project or purpose for which the wiring was installed.

(iii) Temporary electrical installations of more than 600 volts may be used only during periods of tests, experiments, or emergencies.

(iv) The following requirements apply to feeders:

(A) Feeders shall originate in an approved distribution center.

(B) Conductors shall be run as multiconductor cord or cable assemblies. However, if installed as permitted in paragraph (a)(2)(i)(C) of this section, and if accessible only to qualified persons, feeders may be run as single insulated conductors.

(v) The following requirements apply to branch circuits:

(A) Branch circuits shall originate in an approved power outlet or panelboard.

(B) Conductors shall be multiconductor cord or cable assemblies or open conductors. If run as open conductors they shall be fastened at ceiling height every 3.05 m (10.0 ft).

(C) No branch-circuit conductor may be laid on the floor.

(D) Each branch circuit that supplies receptacles or fixed equipment shall contain a separate equipment grounding conductor if run as open conductors.

(vi) Receptacles shall be of the grounding type. Unless installed in a continuous grounded metallic raceway or metallic covered cable, each branch circuit shall contain a separate equipment grounding conductor and all receptacles shall be electrically connected to the grounding conductor.

(vii) No bare conductors nor earth returns may be used for the wiring of any temporary circuit.

(viii) Suitable disconnecting switches or plug connectors shall be installed to permit the disconnection of all ungrounded conductors of each temporary circuit. Multiwire branch circuits shall be provided with a means to disconnect simultaneously all ungrounded conductors at the power outlet or panelboard where the branch circuit originated.

Note to paragraph (a)(2)(viii) of this section. Circuit breakers with their handles connected by approved handle ties are considered a single disconnecting means for the purpose of this requirement.

(ix) All lamps for general illumination shall be protected from accidental contact or breakage by a suitable fixture or lampholder with a guard. Brass shell, paper-lined sockets, or other metal-cased sockets may not be used unless the shell is grounded.

(x) Flexible cords and cables shall be protected from accidental damage, as might be caused, for example, by sharp corners, projections, and doorways or other pinch points.

(xi) Cable assemblies and flexible cords and cables shall be supported in place at intervals that ensure that they will be protected from physical damage. Support shall be in the form of staples, cables ties, straps, or similar type fittings installed so as not to cause damage.

(3) *Cable trays.* (i) Only the following wiring methods may be installed in cable tray systems: Armored cable, electrical metallic tubing, electrical nonmetallic tubing, fire alarm cables, flexible metal conduit, flexible metallic tubing, instrumentation tray cable, intermediate metal conduit, liquidtight flexible metal conduit and liquidtight flexible nonmetallic conduit, metal-clad cable, mineral-insulated, metal-sheathed cable, multiconductor service-entrance cable, multiconductor underground feeder and branch-circuit cable, multipurpose and communications cables, nonmetallic-sheathed cable, power and control tray cable, power-limited tray cable, optical fiber cables, other factory-assembled, multiconductor control, signal, or power cables that are specifically approved for installation in cable trays, rigid metal conduit, and rigid nonmetallic conduit.

(ii) In industrial establishments where conditions of maintenance and supervision assure that only qualified persons will service the installed cable tray system, the following cables may also be installed in ladder, ventilated-trough, or ventilated-channel cable trays:

(A) Single conductor cable; the cable shall be No. 1/0 or larger and shall be of a type listed and marked on the surface for use in cable trays; where Nos. 1/0 through 4/0 single conductor cables are installed in ladder cable tray, the maximum allowable rung spacing for the ladder cable tray shall be 229 mm (9 in.); where exposed to direct rays of the sun, cables shall be identified as being sunlight resistant;

(B) Welding cables installed in dedicated cable trays;

(C) Single conductors used as equipment grounding conductors; these conductors, which may be insulated, covered, or bare, shall be No. 4 or larger;

(D) Multiconductor cable, Type MV; where exposed to direct rays of the sun, the cable shall be identified as being sunlight resistant.

(iii) Metallic cable trays may be used as equipment grounding conductors only where continuous maintenance and supervision ensure that qualified persons will service the installed cable tray system.

(iv) Cable trays in hazardous (classified) locations may contain only the cable types permitted in such locations. (See § 1910.307.)

(v) Nonmetallic cable trays may only be installed in corrosive areas and in areas requiring voltage isolation.

(vi) Cable tray systems may not be used in hoistways or where subjected to severe physical damage.

(4) *Open wiring on insulators.* (i) Open wiring on insulators is only permitted on systems of 600 volts, nominal, or less for industrial or agricultural establishments, indoors or outdoors, in wet or dry locations, where subject to corrosive vapors, and for services.

(ii) Conductors smaller than No. 8 shall be rigidly supported on noncombustible, nonabsorbent insulating materials and may not contact any other objects. Supports shall be installed as follows:

(A) Within 152 mm (6 in.) from a tap or splice;

(B) Within 305 mm (12 in.) of a dead-end connection to a lampholder or receptacle; and

(C) At intervals not exceeding 1.37 m (4.5 ft), and at closer intervals sufficient to provide adequate support where likely to be disturbed.

(iii) In dry locations, where not exposed to severe physical damage, conductors may be separately enclosed in flexible nonmetallic tubing. The tubing shall be in continuous lengths not exceeding 4.57 m (15.0 ft) and secured to the surface by straps at intervals not exceeding 1.37 m (4.5 ft).

(iv) Open conductors shall be separated from contact with walls, floors, wood cross members, or partitions through which they pass by tubes or bushings of noncombustible, nonabsorbent insulating material. If the bushing is shorter than the hole, a waterproof sleeve of nonconductive material shall be inserted in the hole and an insulating bushing slipped into the sleeve at each end in such a manner as to keep the conductors absolutely out of contact with the sleeve. Each conductor shall be carried through a separate tube or sleeve.

(v) Where open conductors cross ceiling joints and wall studs and are exposed to physical damage (for example, located within 2.13 m (7.0 ft) of the floor), they shall be protected.

(b) *Cabinets, boxes, and fittings*—(1) *Conductors entering boxes, cabinets, or fittings.* (i) Conductors entering cutout boxes, cabinets, or fittings shall be protected from abrasion, and openings through which conductors enter shall be effectively closed.

(ii) Unused openings in cabinets, boxes, and fittings shall be effectively closed.

(iii) Where cable is used, each cable shall be secured to the cabinet, cutout box, or meter socket enclosure. However, where cable with an entirely nonmetallic sheath enters the top of a surface-mounted enclosure through one or more nonflexible raceways not less than 457 mm (18 in.) or more than 3.05 m (10.0 ft) in length, the cable need not be secured to the cabinet, box, or enclosure provided all of the following conditions are met:

(A) Each cable is fastened within 305 mm (12 in.) of the outer end of the raceway, measured along the sheath;

(B) The raceway extends directly above the enclosure and does not penetrate a structural ceiling;

(C) A fitting is provided on each end of the raceway to protect the cable from abrasion, and the fittings remain accessible after installation;

(D) The raceway is sealed or plugged at the outer end using approved means so as to prevent access to the enclosure through the raceway;

(E) The cable sheath is continuous through the raceway and extends into the enclosure not less than 6.35 mm (0.25 in.) beyond the fitting;

(F) The raceway is fastened at its outer end and at other points as necessary; and

(G) Where installed as conduit or tubing, the allowable cable fill does not exceed that permitted for complete conduit or tubing systems.

(2) *Covers and canopies.* (i) All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used they shall be grounded. In completed installations each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear.

(ii) Where a fixture canopy or pan is used, any combustible wall or ceiling finish exposed between the edge of the canopy or pan and the outlet box shall be covered with noncombustible material.

(3) *Pull and junction boxes for systems over 600 volts, nominal.* In addition to other requirements in this section, the following requirements apply to pull and junction boxes for systems over 600 volts, nominal:

(i) Boxes shall provide a complete enclosure for the contained conductors or cables.

(ii) Boxes shall be closed by suitable covers securely fastened in place.

Note to paragraph (b)(3)(ii) of this section: Underground box covers that weigh over 45.4 kg (100 lbs) meet this requirement.

(iii) Covers for boxes shall be permanently marked "HIGH VOLTAGE." The marking shall be on the outside of the box cover and shall be readily visible and legible.

(c) *Switches*—(1) *Single-throw knife switches.* Single-throw knife switches shall be so placed that gravity will not tend to close them. Single-throw knife switches approved for use in the inverted position shall be provided with a locking device that will ensure that the blades remain in the open position when so set.

(2) *Double-throw knife switches.* Double-throw knife switches may be mounted so that the throw will be either vertical or horizontal. However, if the throw is vertical, a locking device shall be provided to ensure that the blades remain in the open position when so set.

(3) *Connection of switches.* (i) Single-throw knife switches and switches with butt contacts shall be connected so that the blades are deenergized when the switch is in the open position.

(ii) Single-throw knife switches, molded-case switches, switches with butt contacts, and circuit breakers used as switches shall be connected so that the terminals supplying the load are deenergized when the switch is in the open position. However, blades and terminals supplying the load of a switch may be energized when the switch is in the open position where the switch is connected to circuits or equipment inherently capable of providing a backfeed source of power. For such installations, a permanent sign shall be installed on the switch enclosure or immediately adjacent to open switches that reads, "WARNING—LOAD SIDE TERMINALS MAY BE ENERGIZED BY BACKFEED."

(4) *Faceplates for flush-mounted snap switches.* Snap switches mounted in boxes shall have faceplates installed so as to completely cover the opening and seat against the finished surface.

(5) *Grounding.* Snap switches, including dimmer switches, shall be effectively grounded and shall provide a

means to ground metal faceplates, whether or not a metal faceplate is installed. However, if no grounding means exists within the snap-switch enclosure, or where the wiring method does not include or provide an equipment ground, a snap switch without a grounding connection is permitted for replacement purposes only. Such snap switches shall be provided with a faceplate of nonconducting, noncombustible material if they are located within reach of conducting floors or other conducting surfaces.

(d) *Switchboards and panelboards*—(1) *Switchboards with exposed live parts.* Switchboards that have any exposed live parts shall be located in permanently dry locations and shall be accessible only to qualified persons.

(2) *Panelboard enclosures.* Panelboards shall be mounted in cabinets, cutout boxes, or enclosures designed for the purpose and shall be dead front. However, panelboards other than the dead front externally-operable type are permitted where accessible only to qualified persons.

(3) *Knife switches mounted in switchboards or panelboards.* Exposed blades of knife switches mounted in switchboards or panelboards shall be dead when open.

(e) *Enclosures for damp or wet locations*—(1) *Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures.* Cabinets, cutout boxes, fittings, boxes, and panelboard enclosures in damp or wet locations shall be installed so as to prevent moisture or water from entering and accumulating within the enclosures and shall be mounted so there is at least 6.35-mm (0.25-in.) airspace between the enclosure and the wall or other supporting surface. However, nonmetallic enclosures may be installed without the airspace on a concrete, masonry, tile, or similar surface. The enclosures shall be weatherproof in wet locations.

(2) *Switches, circuit breakers, and switchboards.* Switches, circuit breakers, and switchboards installed in wet locations shall be enclosed in weatherproof enclosures.

(f) *Conductors for general wiring*—(1) *Insulation.* All conductors used for general wiring shall be insulated unless otherwise permitted in this subpart.

(2) *Type.* The conductor insulation shall be of a type that is approved for the voltage, operating temperature, and location of use.

(3) *Distinguishable.* Insulated conductors shall be distinguishable by appropriate color or other suitable means as being grounded conductors, ungrounded conductors, or equipment grounding conductors.

(g) *Flexible cords and cables*—(1) *Use of flexible cords and cables.* (i) Flexible cords and cables shall be approved for conditions of use and location.

(ii) Flexible cords and cables may be used only for:

(A) Pendants;

(B) Wiring of fixtures;

(C) Connection of portable lamps or appliances;

(D) Portable and mobile signs;

(E) Elevator cables;

(F) Wiring of cranes and hoists;

(G) Connection of stationary equipment to facilitate their frequent interchange;

(H) Prevention of the transmission of noise or vibration;

(I) Appliances where the fastening means and mechanical connections are designed to permit removal for maintenance and repair;

(J) Data processing cables approved as a part of the data processing system;

(K) Connection of moving parts; and

(L) Temporary wiring as permitted in paragraph (a)(2) of this section.

(iii) If used as permitted in paragraphs (g)(1)(ii)(C), (g)(1)(ii)(G), or (g)(1)(ii)(I) of this section, the flexible cord shall be equipped with an attachment plug and shall be energized from an approved receptacle outlet.

(iv) Unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used:

(A) As a substitute for the fixed wiring of a structure;

(B) Where run through holes in walls, ceilings, or floors;

(C) Where run through doorways, windows, or similar openings;

(D) Where attached to building surfaces;

(E) Where concealed behind building walls, ceilings, or floors; or

(F) Where installed in raceways, except as otherwise permitted in this subpart.

(v) Flexible cords used in show windows and showcases shall be Type S, SE, SEO, SEOO, SJ, SJE, SJEO, SJEOO, SJO, SJOO, SJT, SJTO, SJTOO, SO, SOO, ST, STO, or STOO except for the wiring of chain-supported lighting fixtures and supply cords for portable lamps and other merchandise being displayed or exhibited.

(2) *Identification, splices, and terminations.* (i) A conductor of a flexible cord or cable that is used as a grounded conductor or an equipment grounding conductor shall be distinguishable from other conductors. Types S, SC, SCE, SCT, SE, SEO, SEOO, SJ, SJE, SJEO, SJEOO, SJO, SJT, SJTO, SJTOO, SO, SOO, ST, STO, and STOO flexible cords and Types G, G–GC, PPE, and W flexible cables shall be durably marked on the surface at intervals not exceeding 610 mm (24 in.) with the type designation, size, and number of conductors.

(ii) Flexible cords may be used only in continuous lengths without splice or tap. Hard-service cord and junior hard-service cord No. 14 and larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced.

(iii) Flexible cords and cables shall be connected to devices and fittings so that strain relief is provided that will prevent pull from being directly transmitted to joints or terminal screws.

(h) *Portable cables over 600 volts, nominal.* The following requirements apply to portable cables used at more than 600 volts, nominal:

(1) *Conductor construction.* Multiconductor portable cable for use in supplying power to portable or mobile equipment at over 600 volts, nominal, shall consist of No. 8 or larger conductors employing flexible stranding. However, the minimum size of the insulated ground-check conductor of Type G–GC cables shall be No. 10.

(2) *Shielding.* Cables operated at over 2,000 volts shall be shielded for the purpose of confining the voltage stresses to the insulation.

(3) *Equipment grounding conductors.* Grounding conductors shall be provided.

(4) *Grounding shields.* All shields shall be grounded.

(5) *Minimum bending radii.* The minimum bending radii for portable cables during installation and handling in service shall be adequate to prevent damage to the cable.

(6) *Fittings.* Connectors used to connect lengths of cable in a run shall be of a type that lock firmly together. Provisions shall be made to prevent opening or closing these connectors while energized. Strain relief shall be provided at connections and terminations.

(7) *Splices.* Portable cables may not be operated with splices unless the splices are of the permanent molded, vulcanized, or other approved type.

(8) *Terminations.* Termination enclosures shall be suitably marked with a high voltage hazard warning, and terminations shall be accessible only to authorized and qualified employees.

(i) *Fixture wires*—(1) *General.* Fixture wires shall be approved for the voltage, temperature, and location of use. A fixture wire which is used as a grounded conductor shall be identified.

(2) *Uses permitted.* Fixture wires may be used only:

(i) For installation in lighting fixtures and in similar equipment where enclosed or protected and not subject to bending or twisting in use; or

(ii) For connecting lighting fixtures to the branch-circuit conductors supplying the fixtures.

(3) *Uses not permitted.* Fixture wires may not be used as branch-circuit conductors except as permitted for Class 1 power limited circuits and for fire alarm circuits.

(j) *Equipment for general use*—(1) *Lighting fixtures, lampholders, lamps, and receptacles.* (i) Fixtures, lampholders, lamps, rosettes, and receptacles may have no live parts normally exposed to employee contact. However, rosettes and cleat-type lampholders and receptacles located at least 2.44 m (8.0 ft) above the floor may have exposed terminals.

(ii) Handlamps of the portable type supplied through flexible cords shall be equipped with a handle of molded composition or other material identified for the purpose, and a substantial guard shall be attached to the lampholder or the handle. Metal shell, paper-lined lampholders may not be used.

(iii) Lampholders of the screw-shell type shall be installed for use as lampholders only. Where supplied by a circuit having a grounded conductor, the grounded conductor shall be connected to the screw shell. Lampholders installed in wet or damp locations shall be of the weatherproof type.

(iv) Fixtures installed in wet or damp locations shall be identified for the purpose and shall be so constructed or installed that water cannot enter or accumulate in wireways, lampholders, or other electrical parts.

(2) *Receptacles, cord connectors, and attachment plugs (caps).* (i) All 15– and 20–ampere attachment plugs and connectors shall be constructed so that there are no exposed current-carrying parts except the prongs, blades, or pins. The cover for wire terminations shall be a part that is essential for the operation of an attachment plug or connector (dead-front construction). Attachment plugs shall be installed so that their prongs, blades, or pins are not energized unless inserted into an energized receptacle. No receptacles may be installed so as to require an energized attachment plug as its source of supply.

(ii) Receptacles, cord connectors, and attachment plugs shall be constructed so that no receptacle or cord connector will accept an attachment plug with a different voltage or current rating than that for which the device is intended. However, a 20–ampere T-slot receptacle or cord connector may accept a 15–ampere attachment plug of the same voltage rating.

(iii) Nongrounding-type receptacles and connectors may not be used for grounding-type attachment plugs.

(iv) A receptacle installed in a wet or damp location shall be suitable for the location.

(v) A receptacle installed outdoors in a location protected from the weather or in other damp locations shall have an enclosure for the receptacle that is weatherproof when the receptacle is covered (attachment plug cap not inserted and receptacle covers closed).

Note to paragraph (j)(2)(v) of this section. A receptacle is considered to be in a location protected from the weather when it is located under roofed open porches, canopies, marquees, or the like and where it will not be subjected to a beating rain or water runoff.

(vi) A receptacle installed in a wet location where the product intended to be plugged into it is not attended while in use (for example, sprinkler system controllers, landscape lighting, and holiday lights) shall have an enclosure that is weatherproof with the attachment plug cap inserted or removed.

(vii) A receptacle installed in a wet location where the product intended to be plugged into it will be attended while in use (for example, portable tools) shall have an enclosure that is weatherproof when the attachment plug cap is removed.

(3) *Appliances.* (i) Appliances may have no live parts normally exposed to contact other than parts functioning as open-resistance heating elements, such as the heating elements of a toaster, which are necessarily exposed.

(ii) Each appliance shall have a means to disconnect it from all ungrounded conductors. If an appliance is supplied by more than one source, the disconnecting means shall be grouped and identified.

(iii) Each electric appliance shall be provided with a nameplate giving the identifying name and the rating in volts and amperes, or in volts and watts. If the appliance is to be used on a specific frequency or frequencies, it shall be so marked. Where motor overload protection external to the appliance is required, the appliance shall be so marked.

(iv) Marking shall be located so as to be visible or easily accessible after installation.

(4) *Motors.* This paragraph applies to motors, motor circuits, and controllers.

(i) If specified in paragraph (j)(4) of this section that one piece of equipment shall be "within sight of" another piece of equipment, the piece of equipment shall be visible and not more than 15.24 m (50.0 ft) from the other.

(ii) An individual disconnecting means shall be provided for each controller. A disconnecting means shall be located within sight of the controller location. However, a single disconnecting means may be located adjacent to a group of coordinated controllers mounted adjacent to each other on a multi-motor continuous process machine. The controller disconnecting means for motor branch circuits over 600 volts, nominal, may be out of sight of the controller, if the controller is marked with a warning label giving the location and identification of the disconnecting means that is to be locked in the open position.

(iii) The disconnecting means shall disconnect the motor and the controller from all ungrounded supply conductors and shall be so designed that no pole can be operated independently.

(iv) The disconnecting means shall plainly indicate whether it is in the open (off) or closed (on) position.

(v) The disconnecting means shall be readily accessible. If more than one disconnect is provided for the same equipment, only one need be readily accessible.

(vi) An individual disconnecting means shall be provided for each motor, but a single disconnecting means may be used for a group of motors under any one of the following conditions:

(A) If a number of motors drive several parts of a single machine or piece of apparatus, such as a metal or woodworking machine, crane, or hoist;

(B) If a group of motors is under the protection of one set of branch-circuit protective devices; or

(C) If a group of motors is in a single room within sight of the location of the disconnecting means.

(vii) Motors, motor-control apparatus, and motor branch-circuit conductors shall be protected against overheating due to motor overloads or failure to start, and against short-circuits or ground faults. These provisions do not require overload protection that will stop a motor where a shutdown is likely to introduce additional or increased hazards, as in the case of fire pumps, or where continued operation of a motor is necessary for a safe shutdown of equipment or process and motor overload sensing devices are connected to a supervised alarm.

(viii) Where live parts of motors or controllers operating at over 150 volts to ground are guarded against accidental contact only by location, and where

adjustment or other attendance may be necessary during the operation of the apparatus, suitable insulating mats or platforms shall be provided so that the attendant cannot readily touch live parts unless standing on the mats or platforms.

(5) *Transformers.* (i) Paragraph (j)(5) of this section covers the installation of all transformers except the following:

(A) Current transformers;

(B) Dry-type transformers installed as a component part of other apparatus;

(C) Transformers that are an integral part of an X-ray, high frequency, or electrostatic-coating apparatus;

(D) Transformers used with Class 2 and Class 3 circuits, sign and outline lighting, electric discharge lighting, and power-limited fire-alarm circuits; and

(E) Liquid-filled or dry-type transformers used for research, development, or testing, where effective safeguard arrangements are provided.

(ii) The operating voltage of exposed live parts of transformer installations shall be indicated by signs or visible markings on the equipment or structure.

(iii) Dry-type, high fire point liquid-insulated, and askarel-insulated transformers installed indoors and rated over 35kV shall be in a vault.

(iv) Oil-insulated transformers installed indoors shall be installed in a vault.

(v) Combustible material, combustible buildings and parts of buildings, fire escapes, and door and window openings shall be safeguarded from fires that may originate in oil-insulated transformers attached to or adjacent to a building or combustible material.

(vi) Transformer vaults shall be constructed so as to contain fire and combustible liquids within the vault and to prevent unauthorized access. Locks and latches shall be so arranged that a vault door can be readily opened from the inside.

(vii) Any pipe or duct system foreign to the electrical installation may not enter or pass through a transformer vault.

Note to paragraph (j)(5)(vii) of this section. Piping or other facilities provided for vault fire protection, or for transformer cooling, are not considered foreign to the electrical installation.

(viii) Material may not be stored in transformer vaults.

(6) *Capacitors.* (i) All capacitors, except surge capacitors or capacitors included as a component part of other apparatus, shall be provided with an automatic means of draining the stored charge after the capacitor is disconnected from its source of supply.

(ii) The following requirements apply to capacitors installed on circuits operating at more than 600 volts, nominal:

(A) Group-operated switches shall be used for capacitor switching and shall be capable of the following:

(*1*) Carrying continuously not less than 135 percent of the rated current of the capacitor installation;

(*2*) Interrupting the maximum continuous load current of each capacitor, capacitor bank, or capacitor installation that will be switched as a unit;

(*3*) Withstanding the maximum inrush current, including contributions from adjacent capacitor installations; and

(*4*) Carrying currents due to faults on the capacitor side of the switch.

(B) A means shall be installed to isolate from all sources of voltage each capacitor, capacitor bank, or capacitor installation that will be removed from service as a unit. The isolating means shall provide a visible gap in the electric circuit adequate for the operating voltage.

(C) Isolating or disconnecting switches (with no interrupting rating) shall be interlocked with the load interrupting device or shall be provided with prominently displayed caution signs to prevent switching load current.

(D) For series capacitors, the proper switching shall be assured by use of at least one of the following:

(*1*) Mechanically sequenced isolating and bypass switches;

(*2*) Interlocks; or

(*3*) Switching procedure prominently displayed at the switching location.

(7) *Storage Batteries.* Provisions shall be made for sufficient diffusion and ventilation of gases from storage batteries to prevent the accumulation of explosive mixtures.

§ 1910.306 Specific purpose equipment and installations.

(a) *Electric signs and outline lighting*—(1) *Disconnecting means.* (i) Each sign and outline lighting system, or feeder circuit or branch circuit supplying a sign or outline lighting system, shall be controlled by an externally operable switch or circuit breaker that will open all ungrounded conductors. However, a disconnecting means is not required for an exit directional sign located within a building or for cord-connected signs with an attachment plug.

(ii) Signs and outline lighting systems located within fountains shall have the disconnect located at least 1.52 m (5.0 ft) from the inside walls of the fountain.

(2) *Location.* (i) The disconnecting means shall be within sight of the sign or outline lighting system that it controls. Where the disconnecting means is out of the line of sight from any section that may be energized, the disconnecting means shall be capable of being locked in the open position.

(ii) Signs or outline lighting systems operated by electronic or electromechanical controllers located external to the sign or outline lighting system may have a disconnecting means located within sight of the controller or in the same enclosure with the controller. The disconnecting means shall disconnect the sign or outline lighting system and the controller from all ungrounded supply conductors. It shall be designed so no pole can be operated independently and shall be capable of being locked in the open position.

(iii) Doors or covers giving access to uninsulated parts of indoor signs or outline lighting exceeding 600 volts and accessible to other than qualified persons shall either be provided with interlock switches to disconnect the primary circuit or shall be so fastened that the use of other than ordinary tools will be necessary to open them.

(b) *Cranes and hoists.* This paragraph applies to the installation of electric equipment and wiring used in connection with cranes, monorail hoists, hoists, and all runways.

(1) *Disconnecting means for runway conductors.* A disconnecting means shall be provided between the runway contact conductors and the power supply. Such disconnecting means shall consist of a motor-circuit switch, circuit breaker, or molded case switch. The disconnecting means shall open all ungrounded conductor simultaneously and shall be:

(i) Readily accessible and operable from the ground or floor level,

(ii) Arranged to be locked in the open position; and

(iii) Placed within view of the runway contact conductors.

(2) *Disconnecting means for cranes and monorail hoists.* (i) Except as provided in paragraph (b)(2)(iv) of this section, a motor-circuit switch, molded case switch, or circuit breaker shall be provided in the leads from the runway contact conductors or other power supply on all cranes and monorail hoists.

(ii) The disconnecting means shall be capable of being locked in the open position.

(iii) Means shall be provided at the operating station to open the power circuit to all motors of the crane or monorail hoist where the disconnecting means is not readily accessible from the crane or monorail hoist operating station.

(iv) The disconnecting means may be omitted where a monorail hoist or hand-propelled crane bridge installation meets all of the following conditions:

(A) The unit is controlled from the ground or floor level;

(B) The unit is within view of the power supply disconnecting means; and

(C) No fixed work platform has been provided for servicing the unit.

(3) *Limit switch.* A limit switch or other device shall be provided to prevent the load block from passing the safe upper limit of travel of any hoisting mechanism.

(4) *Clearance.* The dimension of the working space in the direction of access to live parts that may require examination, adjustment, servicing, or maintenance while alive shall be a minimum of 762 mm (2.5 ft). Where controls are enclosed in cabinets, the doors shall either open at least 90 degrees or be removable.

(c) *Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.* The following requirements apply to elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts.

(1) *Disconnecting means.* Elevators, dumbwaiters, escalators, moving walks, wheelchair lifts, and stairway chair lifts shall have a single means for disconnecting all ungrounded main power supply conductors for each unit.

(2) *Control panels.* Control panels not located in the same space as the drive machine shall be located in cabinets with doors or panels capable of being locked closed.

(3) *Type.* The disconnecting means shall be an enclosed externally operable fused motor circuit switch or circuit breaker capable of being locked in the open position. The disconnecting means shall be a listed device.

(4) *Operation.* No provision may be made to open or close this disconnecting means from any other part of the premises. If sprinklers are installed in hoistways, machine rooms, or machinery spaces, the disconnecting means may automatically open the power supply to the affected elevators prior to the application of water. No provision may be made to close this disconnecting means automatically (that is, power may only be restored by manual means).

(5) *Location.* The disconnecting means shall be located where it is readily accessible to qualified persons.

(i) On elevators without generator field control, the disconnecting means shall be located within sight of the motor controller. Driving machines or motion and operation controllers not within sight of the disconnecting means shall be provided with a manually operated switch installed in the control circuit adjacent to the equipment in order to prevent starting. Where the driving machine is located in a remote machinery space, a single disconnecting means for disconnecting all ungrounded main power supply conductors shall be provided and be capable of being locked in the open position.

(ii) On elevators with generator field control, the disconnecting means shall be located within sight of the motor controller for the driving motor of the motor-generator set. Driving machines, motor-generator sets, or motion and operation controllers not within sight of the disconnecting means shall be provided with a manually operated switch installed in the control circuit to prevent starting. The manually operated switch shall be installed adjacent to this equipment. Where the driving machine or the motor-generator set is located in a remote machinery space, a single means for disconnecting all ungrounded main power supply conductors shall be provided and be capable of being locked in the open position.

(iii) On escalators and moving walks, the disconnecting means shall be installed in the space where the controller is located.

(iv) On wheelchair lifts and stairway chair lifts, the disconnecting means shall be located within sight of the motor controller.

(6) *Identification and signs.* (i) Where there is more than one driving machine in a machine room, the disconnecting means shall be numbered to correspond to the identifying number of the driving machine that they control.

(ii) The disconnecting means shall be provided with a sign to identify the location of the supply-side overcurrent protective device.

(7) *Single-car and multicar installations.* On single-car and multicar installations, equipment receiving electrical power from more than one source shall be provided with a disconnecting means for each source of electrical power. The disconnecting means shall be within sight of the equipment served.

(8) *Warning sign for multiple disconnecting means.* A warning sign shall be mounted on or next to the disconnecting means where multiple disconnecting means are used and parts of the controllers remain energized from a source other than the one disconnected. The sign shall be clearly legible and shall read "WARNING—PARTS OF THE CONTROLLER ARE NOT DEENERGIZED BY THIS SWITCH."

(9) *Interconnection between multicar controllers.* A warning sign worded as required in paragraph (c)(8) of this section shall be mounted on or next to the disconnecting means where interconnections between controllers are necessary for the operation of the system on multicar installations that remain energized from a source other than the one disconnected.

(10) *Motor controllers.* Motor controllers may be located outside the spaces otherwise required by paragraph (c) of this section, provided they are in enclosures with doors or removable panels capable of being locked closed and the disconnecting means is located adjacent to or is an integral part of the motor controller. Motor controller enclosures for escalators or moving walks may be located in the balustrade on the side located away from the moving steps or moving treadway. If the disconnecting means is an integral part of the motor controller, it shall be operable without opening the enclosure.

(d) *Electric welders—disconnecting means*—(1) *Arc welders.* A disconnecting means shall be provided in the supply circuit for each arc welder that is not equipped with a disconnect mounted as an integral part of the welder. The disconnecting means shall be a switch or circuit breaker, and its rating may not be less than that necessary to accommodate overcurrent protection.

(2) *Resistance welder.* A switch or circuit breaker shall be provided by which each resistance welder and its control equipment can be disconnected from the supply circuit. The ampere rating of this disconnecting means may not be less than the supply conductor ampacity. The supply circuit switch may be used as the welder disconnecting means where the circuit supplies only one welder.

(e) *Information technology equipment—disconnecting means.* A means shall be provided to disconnect power to all electronic equipment in an information technology equipment room. There shall also be a similar means to disconnect the power to all dedicated heating, ventilating, and air-conditioning (HVAC) systems serving the room and to cause all required fire/smoke dampers to close. The control for these disconnecting means shall be grouped and identified and shall be readily accessible at the principal exit doors. A single means to control both the electronic equipment and HVAC system is permitted.

(f) *X-ray equipment.* This paragraph applies to X-ray equipment.

(1) *Disconnecting means.* (i) A disconnecting means shall be provided

in the supply circuit. The disconnecting means shall be operable from a location readily accessible from the X-ray control. For equipment connected to a 120-volt branch circuit of 30 amperes or less, a grounding-type attachment plug cap and receptacle of proper rating may serve as a disconnecting means.

(ii) If more than one piece of equipment is operated from the same high-voltage circuit, each piece or each group of equipment as a unit shall be provided with a high-voltage switch or equivalent disconnecting means. The disconnecting means shall be constructed, enclosed, or located so as to avoid contact by employees with its live parts.

(2) *Control.* The following requirements apply to industrial and commercial laboratory equipment. (i) Radiographic and fluoroscopic-type equipment shall be effectively enclosed or shall have interlocks that deenergize the equipment automatically to prevent ready access to live current-carrying parts.

(ii) Diffraction- and irradiation-type equipment shall have a pilot light, readable meter deflection, or equivalent means to indicate when the equipment is energized, unless the equipment or installation is effectively enclosed or is provided with interlocks to prevent access to live current-carrying parts during operation.

(g) *Induction and dielectric heating equipment.* This paragraph applies to induction and dielectric heating equipment and accessories for industrial and scientific applications, but not for medical or dental applications or for appliances.

(1) *Guarding and grounding.* (i) The converting apparatus (including the dc line) and high-frequency electric circuits (excluding the output circuits and remote-control circuits) shall be completely contained within enclosures of noncombustible material.

(ii) All panel controls shall be of dead-front construction.

(iii) Doors or detachable panels shall be employed for internal access. Where doors are used giving access to voltages from 500 to 1000 volts ac or dc, either door locks shall be provided or interlocks shall be installed. Where doors are used giving access to voltages of over 1000 volts ac or dc, either mechanical lockouts with a disconnecting means to prevent access until circuit parts within the cubicle are deenergized, or both door interlocking and mechanical door locks, shall be provided. Detachable panels not normally used for access to such parts shall be fastened in a manner that will make them difficult to remove (for example, by requiring the use of tools).

(iv) Warning labels or signs that read "DANGER—HIGH VOLTAGE—KEEP OUT" shall be attached to the equipment and shall be plainly visible where persons might contact energized parts when doors are opened or closed or when panels are removed from compartments containing over 250 volts ac or dc.

(v) Induction and dielectric heating equipment shall be protected as follows:

(A) Protective cages or adequate shielding shall be used to guard work applicators other than induction heating coils.

(B) Induction heating coils shall be protected by insulation or refractory materials or both.

(C) Interlock switches shall be used on all hinged access doors, sliding panels, or other such means of access to the applicator, unless the applicator is an induction heating coil at dc ground potential or operating at less than 150 volts ac.

(D) Interlock switches shall be connected in such a manner as to remove all power from the applicator when any one of the access doors or panels is open.

(vi) A readily accessible disconnecting means shall be provided by which each heating equipment can be isolated from its supply circuit. The ampere rating of this disconnecting means may not be less than the nameplate current rating of the equipment. The supply circuit disconnecting means is permitted as a heating equipment disconnecting means where the circuit supplies only one piece of equipment.

(2) *Remote control.* (i) If remote controls are used for applying power, a selector switch shall be provided and interlocked to provide power from only one control point at a time.

(ii) Switches operated by foot pressure shall be provided with a shield over the contact button to avoid accidental closing of the switch.

(h) *Electrolytic cells.* This paragraph applies to the installation of the electrical components and accessory equipment of electrolytic cells, electrolytic cell lines, and process power supply for the production of aluminum, cadmium, chlorine, copper, fluorine, hydrogen peroxide, magnesium, sodium, sodium chlorate, and zinc. Cells used as a source of electric energy and for electroplating processes and cells used for production of hydrogen are not covered by this paragraph.

(1) *Application.* Installations covered by paragraph (h) of this section shall comply with all applicable provisions of this subpart, except as follows:

(i) Overcurrent protection of electrolytic cell dc process power circuits need not comply with the requirements of § 1910.304(f).

(ii) Equipment located or used within the cell line working zone or associated with the cell line dc power circuits need not comply with the provisions of § 1910.304(g).

(iii) Electrolytic cells, cell line conductors, cell line attachments, and the wiring of auxiliary equipment and devices within the cell line working zone need not comply with the provisions of § 1910.303 or § 1910.304(b) and (c).

(2) *Disconnecting means.* If more than one dc cell line process power supply serves the same cell line, a disconnecting means shall be provided on the cell line circuit side of each power supply to disconnect it from the cell line circuit. Removable links or removable conductors may be used as the disconnecting means.

(3) *Portable electric equipment.* (i) The frames and enclosures of portable electric equipment used within the cell line working zone may not be grounded, unless the cell line circuit voltage does not exceed 200 volts dc or the frames are guarded.

(ii) Ungrounded portable electric equipment shall be distinctively marked and shall employ plugs and receptacles of a configuration that prevents connection of this equipment to grounding receptacles and that prevents inadvertent interchange of ungrounded and grounded portable electric equipment.

(4) *Power supply circuits and receptacles for portable electric equipment.* (i) Circuits supplying power to ungrounded receptacles for hand-held, cord- and plug-connected equipment shall meet the following requirements:

(A) The circuits shall be electrically isolated from any distribution system supplying areas other than the cell line working zone and shall be ungrounded;

(B) The circuits shall be supplied through isolating transformers with primaries operating at not more than 600 volts between conductors and protected with proper overcurrent protection;

(C) The secondary voltage of the isolating transformers may not exceed 300 volts between conductors; and

(D) All circuits supplied from the secondaries shall be ungrounded and shall have an approved overcurrent device of proper rating in each conductor.

(ii) Receptacles and their mating plugs for ungrounded equipment may not have provision for a grounding conductor and shall be of a configuration that prevents their use for equipment required to be grounded.

(iii) Receptacles on circuits supplied by an isolating transformer with an ungrounded secondary:

(A) Shall have a distinctive configuration;

(B) Shall be distinctively marked; and

(C) May not be used in any other location in the facility.

(5) *Fixed and portable electric equipment.* (i) The following need not be grounded:

(A) AC systems supplying fixed and portable electric equipment within the cell line working zone.

(B) Exposed conductive surfaces, such as electric equipment housings, cabinets, boxes, motors, raceways and the like that are within the cell line working zone.

(ii) Auxiliary electric equipment, such as motors, transducers, sensors, control devices, and alarms, mounted on an electrolytic cell or other energized surface shall be connected to the premises wiring systems by any of the following means:

(A) Multiconductor hard usage or extra hard usage flexible cord;

(B) Wire or cable in suitable nonmetallic raceways or cable trays; or

(C) Wire or cable in suitable metal raceways or metal cable trays installed with insulating breaks such that they will not cause a potentially hazardous electrical condition.

(iii) Fixed electric equipment may be bonded to the energized conductive surfaces of the cell line, its attachments, or auxiliaries. If fixed electric equipment is mounted on an energized conductive surface, it shall be bonded to that surface.

(6) *Auxiliary nonelectrical connections.* Auxiliary nonelectrical connections such as air hoses, water hoses, and the like, to an electrolytic cell, its attachments, or auxiliary equipment may not have continuous conductive reinforcing wire, armor, braids, or the like. Hoses shall be of a nonconductive material.

(7) *Cranes and hoists.* (i) The conductive surfaces of cranes and hoists that enter the cell line working zone need not be grounded. The portion of an overhead crane or hoist that contacts an energized electrolytic cell or energized attachments shall be insulated from ground.

(ii) Remote crane or hoist controls that may introduce hazardous electrical conditions into the cell line working zone shall employ one or more of the following systems:

(A) Isolated and ungrounded control circuit;

(B) Nonconductive rope operator;

(C) Pendant pushbutton with nonconductive supporting means and with nonconductive surfaces or ungrounded exposed conductive surfaces; or

(D) Radio.

(i) *Electrically driven or controlled irrigation machines*—(1) *Lightning protection.* If an irrigation machine has a stationary point, a grounding electrode system shall be connected to the machine at the stationary point for lightning protection.

(2) *Disconnecting means.* (i) The main disconnecting means for a center pivot irrigation machine shall be located at the point of connection of electrical power to the machine or shall be visible and not more than 15.2 m (50 ft) from the machine.

(ii) The disconnecting means shall be readily accessible and capable of being locked in the open position.

(iii) A disconnecting means shall be provided for each motor and controller.

(j) *Swimming pools, fountains, and similar installations.* This paragraph applies to electric wiring for and equipment in or adjacent to all swimming, wading, therapeutic, and decorative pools and fountains; hydromassage bathtubs, whether permanently installed or storable; and metallic auxiliary equipment, such as pumps, filters, and similar equipment. Therapeutic pools in health care facilities are exempt from these provisions.

(1) *Receptacles.* (i) A single receptacle of the locking and grounding type that provides power for a permanently installed swimming pool recirculating pump motor may be located not less than 1.52 m (5 ft) from the inside walls of a pool. All other receptacles on the property shall be located at least 3.05 m (10 ft) from the inside walls of a pool.

(ii) Receptacles that are located within 4.57 m (15 ft), or 6.08 m (20 ft) if the installation was built after the effective date of this standard, of the inside walls of the pool shall be protected by ground-fault circuit interrupters.

(iii) Where a pool is installed permanently at a dwelling unit, at least one 125-volt, 15- or 20-ampere receptacle on a general-purpose branch circuit shall be located a minimum of 3.05 m (10 ft) and not more than 6.08 m (20 ft) from the inside wall of the pool. This receptacle shall be located not more than 1.98 m (6.5 ft) above the floor, platform, or grade level serving the pool.

Note to paragraph (j)(1) of this section: In determining these dimensions, the distance to be measured is the shortest path the supply cord of an appliance connected to the receptacle would follow without piercing a floor, wall, or ceiling of a building or other effective permanent barrier.

(2) *Lighting fixtures, lighting outlets, and ceiling suspended (paddle) fans.* (i) In outdoor pool areas, lighting fixtures, lighting outlets, and ceiling-suspended (paddle) fans may not be installed over the pool or over the area extending 1.52 m (5 ft) horizontally from the inside walls of a pool unless no part of the lighting fixture of ceiling-suspended (paddle) fan is less than 3.66 m (12 ft) above the maximum water level. However, a lighting fixture or lighting outlet that was installed before April 16, 1981, may be located less than 1.52 m (5 ft) measured horizontally from the inside walls of a pool if it is at least 1.52 m (5 ft) above the surface of the maximum water level and is rigidly attached to the existing structure. It shall also be protected by a ground-fault circuit interrupter installed in the branch circuit supplying the fixture.

(ii) Lighting fixtures and lighting outlets installed in the area extending between 1.52 m (5 ft) and 3.05 m (10 ft) horizontally from the inside walls of a pool shall be protected by a ground-fault circuit interrupter unless installed 1.52 m (5 ft) above the maximum water level and rigidly attached to the structure adjacent to or enclosing the pool.

(3) *Cord- and plug-connected equipment.* Flexible cords used with the following equipment may not exceed 0.9 m (3 ft) in length and shall have a copper equipment grounding conductor with a grounding-type attachment plug:

(i) Cord- and plug-connected lighting fixtures installed within 4.88 m (16 ft) of the water surface of permanently installed pools; and

(ii) Other cord- and plug-connected, fixed or stationary equipment used with permanently installed pools.

(4) *Underwater equipment.* (i) A ground-fault circuit interrupter shall be installed in the branch circuit supplying underwater fixtures operating at more than 15 volts. Equipment installed underwater shall be identified for the purpose.

(ii) No underwater lighting fixtures may be installed for operation at over 150 volts between conductors.

(iii) A lighting fixture facing upward shall have the lens adequately guarded to prevent contact by any person.

(5) *Fountains.* All electric equipment, including power supply cords, operating at more than 15 volts and used with fountains shall be protected by ground-fault circuit interrupters.

(k) *Carnivals, circuses, fairs, and similar events.* This paragraph covers the installation of portable wiring and equipment, including wiring in or on all structures, for carnivals, circuses, exhibitions, fairs, traveling attractions, and similar events.

(1) *Protection of electric equipment.* Electric equipment and wiring methods in or on rides, concessions, or other units shall be provided with mechanical protection where such equipment or wiring methods are subject to physical damage.

(2) *Installation.* (i) Services shall be installed in accordance with applicable requirements of this subpart, and, in addition, shall comply with the following:

(A) Service equipment may not be installed in a location that is accessible to unqualified persons, unless the equipment is lockable.

(B) Service equipment shall be mounted on solid backing and installed so as to be protected from the weather, unless the equipment is of weatherproof construction.

(ii) Amusement rides and amusement attractions shall be maintained not less than 4.57 m (15 ft) in any direction from overhead conductors operating at 600 volts or less, except for the conductors supplying the amusement ride or attraction. Amusement rides or attractions may not be located under or within 4.57 m (15 ft) horizontally of conductors operating in excess of 600 volts.

(iii) Flexible cords and cables shall be listed for extra-hard usage. When used outdoors, flexible cords and cables shall also be listed for wet locations and shall be sunlight resistant.

(iv) Single conductor cable shall be size No. 2 or larger.

(v) Open conductors are prohibited except as part of a listed assembly or festoon lighting installed in accordance with § 1910.304(c).

(vi) Flexible cords and cables shall be continuous without splice or tap between boxes or fittings. Cord connectors may not be laid on the ground unless listed for wet locations. Connectors and cable connections may not be placed in audience traffic paths or within areas accessible to the public unless guarded.

(vii) Wiring for an amusement ride, attraction, tent, or similar structure may not be supported by another ride or structure unless specifically identified for the purpose.

(viii) Flexible cords and cables run on the ground, where accessible to the public, shall be covered with approved nonconductive mats. Cables and mats shall be arranged so as not to present a tripping hazard.

(ix) A box or fitting shall be installed at each connection point, outlet, switch point, or junction point.

(3) *Inside tents and concessions.* Electrical wiring for temporary lighting, where installed inside of tents and concessions, shall be securely installed, and, where subject to physical damage, shall be provided with mechanical protection. All temporary lamps for general illumination shall be protected from accidental breakage by a suitable fixture or lampholder with a guard.

(4) *Portable distribution and termination boxes.* Employers may only use portable distribution and termination boxes that meet the following requirements:

(i) Boxes shall be designed so that no live parts are exposed to accidental contact. Where installed outdoors the box shall be of weatherproof construction and mounted so that the bottom of the enclosure is not less 152 mm (6 in.) above the ground.

(ii) Busbars shall have an ampere rating not less than the overcurrent device supplying the feeder supplying the box. Busbar connectors shall be provided where conductors terminate directly on busbars.

(iii) Receptacles shall have overcurrent protection installed within the box. The overcurrent protection may not exceed the ampere rating of the receptacle, except as permitted in § 1910.305(j)(4) for motor loads.

(iv) Where single-pole connectors are used, they shall comply with the following:

(A) Where ac single-pole portable cable connectors are used, they shall be listed and of the locking type. Where paralleled sets of current-carrying single-pole separable connectors are provided as input devices, they shall be prominently labeled with a warning indicating the presence of internal parallel connections. The use of single-pole separable connectors shall comply with at least one of the following conditions:

(*1*) Connection and disconnection of connectors are only possible where the supply connectors are interlocked to the source and it is not possible to connect or disconnect connectors when the supply is energized; or

(*2*) Line connectors are of the listed sequential-interlocking type so that load connectors are connected in the following sequence:

(*i*) Equipment grounding conductor connection;

(*ii*) Grounded circuit-conductor connection, if provided;

(*iii*) Ungrounded conductor connection; and so that disconnection is in the reverse order; or

(*3*) A caution notice is provided adjacent to the line connectors indicating that plug connection must be in the following sequence:

(*i*) Equipment grounding conductor connection;

(*ii*) Grounded circuit-conductor connection, if provided;

(*iii*) Ungrounded conductor connection; and indicating that disconnection is in the reverse order.

(B) Single-pole separable connectors used in portable professional motion picture and television equipment may be interchangeable for ac or dc use or for different current ratings on the same premises only if they are listed for ac/dc use and marked to identify the system to which they are connected.

(v) Overcurrent protection of equipment and conductors shall be provided.

(vi) The following equipment connected to the same source shall be bonded:

(A) Metal raceways and metal sheathed cable,

(B) Metal enclosures of electrical equipment, and

(C) Metal frames and metal parts of rides, concessions, trailers, trucks, or other equipment that contain or support electrical equipment.

(5) *Disconnecting means.* (i) Each ride and concession shall be provided with a fused disconnect switch or circuit breaker located within sight and within 1.83 m (6 ft) of the operator's station.

(ii) The disconnecting means shall be readily accessible to the operator, including when the ride is in operation.

(iii) Where accessible to unqualified persons, the enclosure for the switch or circuit breaker shall be of the lockable type.

(iv) A shunt trip device that opens the fused disconnect or circuit breaker when a switch located in the ride operator's console is closed is a permissible method of opening the circuit.

§ 1910.307 Hazardous (classified) locations.

(a) *Scope.* (1) This section covers the requirements for electric equipment and wiring in locations that are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers that may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Hazardous (classified) locations may be found in occupancies such as, but not limited to, the following: aircraft

hangars, gasoline dispensing and service stations, bulk storage plants for gasoline or other volatile flammable liquids, paint-finishing process plants, health care facilities, agricultural or other facilities where excessive combustible dusts may be present, marinas, boat yards, and petroleum and chemical processing plants. Each room, section or area shall be considered individually in determining its classification.

(2) These hazardous (classified) locations are assigned the following designations:

Class I, Division 1;
Class I, Division 2;
Class I, Zone 0;
Class I, Zone 1;
Class I, Zone 2;
Class II, Division 1;
Class II, Division 2;
Class III, Division 1;
Class III, Division 2.

For definitions of these locations *see* § 1910.399.

(3) All applicable requirements in this subpart apply to hazardous (classified) locations unless modified by provisions of this section.

(4) In Class I locations, an installation must be classified as using the division classification system meeting paragraphs (c), (d), (e) and (f) of this section or using the zone classification system meeting paragraph (g) of this section. In Class II and Class III locations, an installation must be classified using the division classification system meeting paragraphs (c), (d), (e) and (f) of this section.

(b) *Documentation.* All areas designated as hazardous (classified) locations under the Class and Zone system and areas designated under the Class and Division system established after the effective date of the standard shall be properly documented. This documentation shall be available to those authorized to design, install, inspect, maintain, or operate electric equipment at the location.

(c) *Electrical installations.* Equipment, wiring methods, and installations of equipment in hazardous (classified) locations shall be intrinsically safe, approved for the hazardous (classified) location, or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(1) *Intrinsically safe.* Equipment and associated wiring approved as intrinsically safe is permitted in any hazardous (classified) location for which it is approved.

(2) *Approved for the hazardous (classified) location.* (i) Equipment shall be approved not only for the class of location, but also for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note to paragraph (c)(2)(i) of this section: NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by "Groups" characterized by their ignitable or combustible properties.

(ii) Equipment shall be marked to show the class, group, and operating temperature or temperature range, based on operation in a 40-degree C ambient, for which it is approved. The temperature marking may not exceed the ignition temperature of the specific gas or vapor to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(A) Equipment of the nonheat-producing type, such as junction boxes, conduit, and fittings, and equipment of the heat-producing type having a maximum temperature not more than 100 °C (212 °F) need not have a marked operating temperature or temperature range.

(B) Fixed lighting fixtures marked for use in Class I, Division 2 or Class II, Division 2 locations only need not be marked to indicate the group.

(C) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, that is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature.

(D) Fixed dust-tight equipment, other than lighting fixtures, that is acceptable for use in Class II, Division 2 and Class III locations need not be marked with the class, group, division, or operating temperature.

(E) Electric equipment suitable for ambient temperatures exceeding 40 °C (104 °F) shall be marked with both the maximum ambient temperature and the operating temperature or temperature range at that ambient temperature.

(3) *Safe for the hazardous (classified) location.* Equipment that is safe for the location shall be of a type and design that the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

Note to paragraph (c)(3) of this section: The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations that will meet this requirement. Those guidelines address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: wiring methods, wiring connections; conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, motor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric cranes, electric hoists and similar equipment, utilization equipment, signaling systems, alarm systems, remote control systems, local loud speaker and communication systems, ventilation piping, live parts, lightning surge protection, and grounding.

(d) *Conduits.* All conduits shall be threaded and shall be made wrench-tight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

(e) *Equipment in Division 2 locations.* Equipment that has been approved for a Division 1 location may be installed in a Division 2 location of the same class and group. General-purpose equipment or equipment in general-purpose enclosures may be installed in Division 2 locations if the employer can demonstrate that the equipment does not constitute a source of ignition under normal operating conditions.

(f) *Protection techniques.* The following are acceptable protection techniques for electric and electronic equipment in hazardous (classified) locations.

(1) *Explosionproof apparatus.* This protection technique is permitted for equipment in the Class I, Division 1 and 2 locations for which it is approved.

(2) *Dust ignitionproof.* This protection technique is permitted for equipment in the Class II, Division 1 and 2 locations for which it is approved.

(3) *Dust-tight.* This protection technique is permitted for equipment in the Class II, Division 2 and Class III locations for which it is approved.

(4) *Purged and pressurized.* This protection technique is permitted for equipment in any hazardous (classified) location for which it is approved.

(5) *Other protection techniques.* Any other protection technique that meets paragraph (c) of this section is acceptable in any hazardous (classified) location.

(g) *Class I, Zone 0, 1, and 2 locations*—(1) *Scope.* Employers may use the zone classification system as an alternative to the division classification system for electric and electronic equipment and wiring for all voltage in Class I, Zone 0, Zone 1, and Zone 2 hazardous (classified) locations where fire or explosion hazards may exist due to flammable gases, vapors, or liquids.

(2) *Location and general requirements.* (i) Locations shall be classified depending on the properties of the flammable vapors, liquids, or gases that may be present and the likelihood that a flammable or

combustible concentration or quantity is present. Where pyrophoric materials are the only materials used or handled, these locations need not be classified.

(ii) Each room, section, or area shall be considered individually in determining its classification.

(iii) All threaded conduit shall be threaded with an NPT standard conduit cutting die that provides ¾-in. taper per foot. The conduit shall be made wrench tight to prevent sparking when fault current flows through the conduit system and to ensure the explosionproof or flameproof integrity of the conduit system where applicable.

(iv) Equipment provided with threaded entries for field wiring connection shall be installed in accordance with paragraph (g)(2)(iv)(A) or (g)(2)(iv)(B) of this section.

(A) For equipment provided with threaded entries for NPT threaded conduit or fittings, listed conduit, conduit fittings, or cable fittings shall be used.

(B) For equipment with metric threaded entries, such entries shall be identified as being metric, or listed adaptors to permit connection to conduit of NPT-threaded fittings shall be provided with the equipment. Adapters shall be used for connection to conduit or NPT-threaded fittings.

(3) *Protection techniques.* One or more of the following protection techniques shall be used for electric and electronic equipment in hazardous (classified) locations classified under the zone classification system:

(i) Flameproof "d"—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(ii) Purged and pressurized—This protection technique is permitted for equipment in the Class I, Zone 1 or Zone 2 locations for which it is approved.

(iii) Intrinsic safety—This protection technique is permitted for equipment in the Class I, Zone 0 or Zone 1 locations for which it is approved.

(iv) Type of protection "n"—This protection technique is permitted for equipment in the Class I, Zone 2 locations for which it is approved. Type of protection "n" is further subdivided into nA, nC, and nR.

(v) Oil Immersion "o"—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(vi) Increased safety "e"—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(vii) Encapsulation "m"—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(viii) Powder Filling "q"—This protection technique is permitted for equipment in the Class I, Zone 1 locations for which it is approved.

(4) *Special precaution.* Paragraph (g) of this section requires equipment construction and installation that will ensure safe performance under conditions of proper use and maintenance.

Note to paragraph (g)(4) of this section: Low ambient conditions require special consideration. Electric equipment depending on the protection techniques described by paragraph (g)(3)(i) of this section may not be suitable for use at temperatures lower than −20° C (−13° F) unless they are approved for use at lower temperatures. However, at low ambient temperatures, flammable concentrations of vapors may not exist in a location classified Class I, Zone 0, 1, or 2 at normal ambient temperature.

(i) Classification of areas and selection of equipment and wiring methods shall be under the supervision of a qualified registered professional engineer.

(ii) In instances of areas within the same facility classified separately, Class I, Zone 2 locations may abut, but not overlap, Class I, Division 2 locations. Class I, Zone 0 or Zone 1 locations may not abut Class I, Division 1 or Division 2 locations.

(iii) A Class I, Division 1 or Division 2 location may be reclassified as a Class I, Zone 0, Zone 1, or Zone 2 location only if all of the space that is classified because of a single flammable gas or vapor source is reclassified.

(5) *Listing and marking.* (i) Equipment that is listed for a Zone 0 location may be installed in a Zone 1 or Zone 2 location of the same gas or vapor. Equipment that is listed for a Zone 1 location may be installed in a Zone 2 location of the same gas or vapor.

(ii) Equipment shall be marked in accordance with paragraph (g)(5)(ii)(A), and (g)(5)(ii)(B) of this section.

(A) Equipment approved for Class I, Division 1 or Class 1, Division 2 shall, in addition to being marked in accordance with (c)(2)(ii), be marked with the following:

(*1*) Class I, Zone 1 or Class I, Zone 2 (as applicable);

(*2*) Applicable gas classification groups; and

(*3*) Temperature classification; or

(B) Equipment meeting one or more of the protection techniques described in paragraph (g)(3) of this section shall be marked with the following in the order shown:

(*1*) Class, except for intrinsically safe apparatus;

(*2*) Zone, except for intrinsically safe apparatus;

(*3*) Symbol "AEx;"

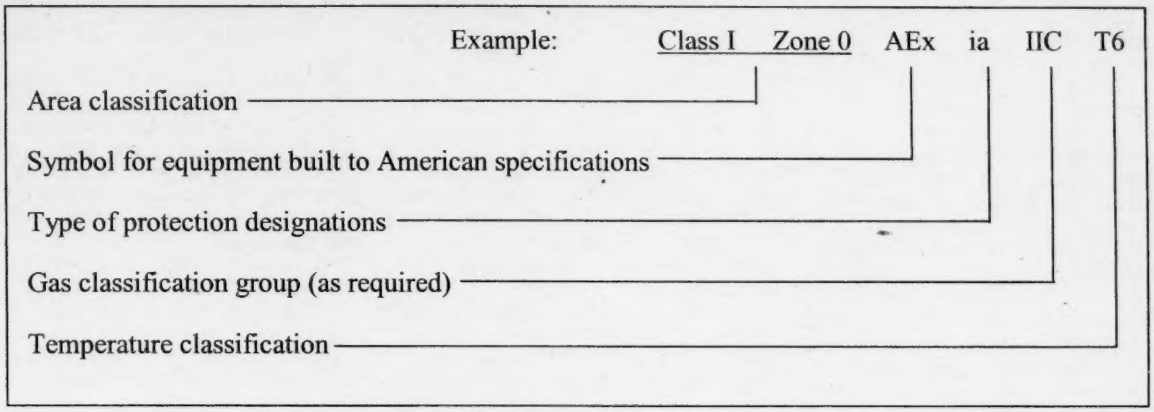
(*4*) Protection techniques;

(*5*) Applicable gas classification groups; and

(*6*) Temperature classification, except for intrinsically safe apparatus.

Note to paragraph (g)(5)(ii)(B) of this section: An example of such a required marking is "Class I, Zone 0, AEx ia IIC T6." See Figure S–1 for an explanation of this marking.

Figure S-1—Example Marking for Class I, Zone 0, AEx ia IIC T6



§ 1910.308 Special systems.

(a) *Systems over 600 volts, nominal.* This paragraph covers the general requirements for all circuits and equipment operated at over 600 volts.

(1) *Aboveground wiring methods.* (i) Aboveground conductors shall be installed in rigid metal conduit, in intermediate metal conduit, in electrical metallic tubing, in rigid nonmetallic conduit, in cable trays, as busways, as cablebus, in other identified raceways, or as open runs of metal-clad cable suitable for the use and purpose. In locations accessible to qualified persons only, open runs of Type MV cables, bare conductors, and bare busbars are also permitted. Busbars shall be either copper or aluminum. Open runs of insulated wires and cables having a bare lead sheath or a braided outer covering shall be supported in a manner designed to prevent physical damage to the braid or sheath.

(ii) Conductors emerging from the ground shall be enclosed in approved raceways.

(2) *Braid-covered insulated conductors-open installations.* The braid on open runs of braid-covered insulated conductors shall be flame retardant or shall have a flame-retardant saturant applied after installation. This treated braid covering shall be stripped back a safe distance at conductor terminals, according to the operating voltage.

(3) *Insulation shielding.* (i) Metallic and semiconductor insulation shielding components of shielded cables shall be removed for a distance dependent on the circuit voltage and insulation. Stress reduction means shall be provided at all terminations of factory-applied shielding.

(ii) Metallic shielding components such as tapes, wires, or braids, or combinations thereof, and their associated conducting and semiconducting components shall be grounded.

(4) *Moisture or mechanical protection for metal-sheathed cables.* Where cable conductors emerge from a metal sheath and where protection against moisture or physical damage is necessary, the insulation of the conductors shall be protected by a cable sheath terminating device.

(5) *Interrupting and isolating devices.* (i) Circuit breaker installations located indoors shall consist of metal-enclosed units or fire-resistant cell-mounted units. In locations accessible only to qualified employees, open mounting of circuit breakers is permitted. A means of indicating the open and closed position of circuit breakers shall be provided.

(ii) Where fuses are used to protect conductors and equipment, a fuse shall be placed in each ungrounded conductor. Two power fuses may be used in parallel to protect the same load, if both fuses have identical ratings, and if both fuses are installed in an identified common mounting with electrical connections that will divide the current equally. Power fuses of the vented type may not be used indoors, underground, or in metal enclosures unless identified for the use.

(iii) Fused cutouts installed in buildings or transformer vaults shall be of a type identified for the purpose. Distribution cutouts may not be used indoors, underground, or in metal enclosures. They shall be readily accessible for fuse replacement.

(iv) Where fused cutouts are not suitable to interrupt the circuit manually while carrying full load, an approved means shall be installed to interrupt the entire load. Unless the fused cutouts are interlocked with the switch to prevent opening of the cutouts under load, a conspicuous sign shall be placed at such cutouts reading: "WARNING—DO NOT OPERATE UNDER LOAD."

(v) Suitable barriers or enclosures shall be provided to prevent contact with nonshielded cables or energized parts of oil-filled cutouts.

(vi) Load interrupter switches may be used only if suitable fuses or circuits are used in conjunction with these devices to interrupt fault currents.

(A) Where these devices are used in combination, they shall be coordinated electrically so that they will safely withstand the effects of closing, carrying, or interrupting all possible currents up to the assigned maximum short-circuit rating.

(B) Where more than one switch is installed with interconnected load terminals to provide for alternate connection to different supply conductors, each switch shall be provided with a conspicuous sign reading: "WARNING—SWITCH MAY BE ENERGIZED BY BACKFEED."

(vii) A means (for example, a fuseholder and fuse designed for the purpose) shall be provided to completely isolate equipment for inspection and repairs. Isolating means that are not designed to interrupt the load current of the circuit shall be either interlocked with an approved circuit interrupter or provided with a sign warning against opening them under load.

(6) *Mobile and portable equipment.* (i) A metallic enclosure shall be provided on the mobile machine for enclosing the terminals of the power cable. The enclosure shall include provisions for a solid connection for the grounding terminal to effectively ground the machine frame. The method of cable

termination used shall prevent any strain or pull on the cable from stressing the electrical connections. The enclosure shall have provision for locking so only authorized qualified persons may open it and shall be marked with a sign warning of the presence of energized parts.

(ii) All energized switching and control parts shall be enclosed in effectively grounded metal cabinets or enclosures. Circuit breakers and protective equipment shall have the operating means projecting through the metal cabinet or enclosure so these units can be reset without locked doors being opened. Enclosures and metal cabinets shall be locked so that only authorized qualified persons have access and shall be marked with a sign warning of the presence of energized parts. Collector ring assemblies on revolving-type machines (shovels, draglines, etc.) shall be guarded.

(7) *Tunnel installations.* This paragraph applies to installation and use of high-voltage power distribution and utilization equipment that is portable or mobile, such as substations, trailers, cars, mobile shovels, draglines, hoists, drills, dredges, compressors, pumps, conveyors, and underground excavators.

(i) Conductors in tunnels shall be installed in one or more of the following:

(A) Metal conduit or other metal raceway;

(B) Type MC cable; or

(C) Other approved multiconductor cable.

(ii) Multiconductor portable cable may supply mobile equipment.

(iii) Conductors and cables shall also be so located or guarded as to protect them from physical damage. An equipment grounding conductor shall be run with circuit conductors inside the metal raceway or inside the multiconductor cable jacket. The equipment grounding conductor may be insulated or bare.

(iv) Bare terminals of transformers, switches, motor controllers, and other equipment shall be enclosed to prevent accidental contact with energized parts.

(v) Enclosures for use in tunnels shall be drip-proof, weatherproof, or submersible as required by the environmental conditions.

(vi) Switch or contactor enclosures may not be used as junction boxes or raceways for conductors feeding through or tapping off to other switches, unless special designs are used to provide adequate space for this purpose.

(vii) A disconnecting means that simultaneously opens all ungrounded conductors shall be installed at each transformer or motor location.

(viii) All nonenergized metal parts of electric equipment and metal raceways and cable sheaths shall be effectively grounded and bonded to all metal pipes and rails at the portal and at intervals not exceeding 305 m (1000 ft) throughout the tunnel.

(b) *Emergency power systems.* This paragraph applies to circuits, systems, and equipment intended to supply power for illumination and special loads in the event of failure of the normal supply.

(1) *Wiring methods.* Emergency circuit wiring shall be kept entirely independent of all other wiring and equipment and may not enter the same raceway, cable, box, or cabinet or other wiring except either where common circuit elements suitable for the purpose are required, or for transferring power from the normal to the emergency source.

(2) *Emergency illumination.* Emergency illumination shall include all required means of egress lighting, illuminated exit signs, and all other lights necessary to provide illumination. Where emergency lighting is necessary, the system shall be so arranged that the failure of any individual lighting element, such as the burning out of a light bulb, cannot leave any space in total darkness.

(3) *Signs.* (i) A sign shall be placed at the service entrance equipment indicating the type and location of on-site emergency power sources. However, a sign is not required for individual unit equipment.

(ii) Where the grounded circuit conductor connected to the emergency source is connected to a grounding electrode conductor at a location remote from the emergency source, there shall be a sign at the grounding location that shall identify all emergency and normal sources connected at that location.

(c) *Class 1, Class 2, and Class 3 remote control, signaling, and power-limited circuits*—(1) *Classification.* Class 1, Class 2, and Class 3 remote control, signaling, or power-limited circuits are characterized by their usage and electrical power limitation that differentiates them from light and power circuits. These circuits are classified in accordance with their respective voltage and power limitations as summarized in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) A Class 1 power-limited circuit shall be supplied from a source having a rated output of not more than 30 volts and 1000 volt-amperes.

(ii) A Class 1 remote control circuit or a Class 1 signaling circuit shall have a voltage not exceeding 600 volts; however, the power output of the source need not be limited.

(iii) The power source for a Class 2 or Class 3 circuit shall be listed equipment marked as a Class 2 or Class 3 power source, except as follows:

(A) Thermocouples do not require listing as a Class 2 power source; and

(B) A dry cell battery is considered an inherently limited Class 2 power source, provided the voltage is 30 volts or less and the capacity is less than or equal to that available from series-connected No. 6 carbon zinc cells.

(2) *Marking.* A Class 2 or Class 3 power supply unit shall be durably marked where plainly visible to indicate the class of supply and its electrical rating.

(3) *Separation from conductors of other circuits.* Cables and conductors of Class 2 and Class 3 circuits may not be placed in any cable, cable tray, compartment, enclosure, manhole, outlet box, device box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpower-limited fire alarm circuits, and medium power network-powered broadband communications cables.

(d) *Fire alarm systems*—(1) *Classifications.* Fire alarm circuits shall be classified either as nonpower limited or power limited.

(2) *Power sources.* The power sources for use with fire alarm circuits shall be either power limited or nonlimited as follows:

(i) The power source of nonpower-limited fire alarm (NPLFA) circuits shall have an output voltage of not more than 600 volts, nominal.

(ii) The power source for a power-limited fire alarm (PLFA) circuit shall be listed equipment marked as a PLFA power source.

(3) *Separation from conductors of other circuits.* (i) Nonpower-limited fire alarm circuits and Class 1 circuits may occupy the same enclosure, cable, or raceway provided all conductors are insulated for maximum voltage of any conductor within the enclosure, cable, or raceway. Power supply and fire alarm circuit conductors are permitted in the same enclosure, cable, or raceway only if connected to the same equipment.

(ii) Power-limited circuit cables and conductors may not be placed in any cable, cable tray, compartment, enclosure, outlet box, raceway, or similar fitting with conductors of electric light, power, Class 1, nonpower-limited fire alarm circuit conductors, or medium power network-powered broadband communications circuits.

(iii) Power-limited fire alarm circuit conductors shall be separated at least

50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits.

(iv) Conductors of one or more Class 2 circuits are permitted within the same cable, enclosure, or raceway with conductors of power-limited fire alarm circuits provided that the insulation of Class 2 circuit conductors in the cable, enclosure, or raceway is at least that needed for the power-limited fire alarm circuits.

(4) *Identification.* Fire alarm circuits shall be identified at terminal and junction locations in a manner that will prevent unintentional interference with the signaling circuit during testing and servicing. Power-limited fire alarm circuits shall be durably marked as such where plainly visible at terminations.

(e) *Communications systems.* This paragraph applies to central-station-connected and non-central-station-connected telephone circuits, radio and television receiving and transmitting equipment, including community antenna television and radio distribution systems, telegraph, district messenger, and outside wiring for fire and burglar alarm, and similar central station systems. These installations need not comply with the provisions of § 1910.303 through § 1910.308(d), except for § 1910.304(c)(1) and § 1910.307.

(1) *Protective devices.* (i) A listed primary protector shall be provided on each circuit run partly or entirely in aerial wire or aerial cable not confined within a block.

(ii) A listed primary protector shall be also provided on each circuit, aerial or underground, located within the block containing the building served so as to be exposed to accidental contact with electric light or power conductors operating at over 300 volts to ground.

(iii) In addition, where there exists a lightning exposure, each interbuilding circuit on premises shall be protected by a listed primary protector at each end of the interbuilding circuit.

(2) *Conductor location.* (i) Lead-in or aerial-drop cables from a pole or other support, including the point of initial attachment to a building or structure, shall be kept away from electric light, power, Class 1, or nonpower-limited fire alarm circuit conductors so as to avoid the possibility of accidental contact.

(ii) A separation of at least 1.83 m (6 ft) shall be maintained between communications wires and cables on buildings and lightning conductors.

(iii) Where communications wires and cables and electric light or power conductors are supported by the same pole or run parallel to each other in-span, the following conditions shall be met:

(A) Where practicable, communication wires and cables on poles shall be located below the electric light or power conductors.

(B) Communications wires and cables may not be attached to a crossarm that carries electric light or power conductors.

(iv) Indoor communications wires and cables shall be separated at least 50.8 mm (2 in.) from conductors of any electric light, power, Class 1, nonpower-limited fire alarm, or medium power network-powered broadband communications circuits, unless a special and equally protective method of conductor separation, identified for the purpose, is employed.

(3) *Equipment location.* Outdoor metal structures supporting antennas, as well as self-supporting antennas such as vertical rods or dipole structures, shall be located as far away from overhead conductors of electric light and power circuits of over 150 volts to ground as necessary to prevent the antenna or structure from falling into or making accidental contact with such circuits.

(4) *Grounding.* (i) If exposed to contact with electric light and power conductors, the metal sheath of aerial cables entering buildings shall be grounded or shall be interrupted close to the entrance to the building by an insulating joint or equivalent device. Where protective devices are used, they shall be grounded in an approved manner.

(ii) Masts and metal structures supporting antennas shall be permanently and effectively grounded without splice or connection in the grounding conductor.

(iii) Transmitters shall be enclosed in a metal frame or grill or separated from the operating space by a barrier, all metallic parts of which are effectively connected to ground. All external metal handles and controls accessible to the operating personnel shall be effectively grounded. Unpowered equipment and enclosures are considered to be grounded where connected to an attached coaxial cable with an effectively grounded metallic shield.

(f) *Solar photovoltaic systems.* This paragraph covers solar photovoltaic systems that can be interactive with other electric power production sources or can stand alone with or without electrical energy storage such as batteries. These systems may have ac or dc output for utilization.

(1) *Conductors of different systems.* Photovoltaic source circuits and photovoltaic output circuits may not be contained in the same raceway, cable tray, cable, outlet box, junction box, or similar fitting as feeders or branch circuits of other systems, unless the conductors of the different systems are separated by a partition or are connected together.

(2) *Disconnecting means.* Means shall be provided to disconnect all current-carrying conductors of a photovoltaic power source from all other conductors in a building or other structure. Where a circuit grounding connection is not designed to be automatically interrupted as part of the ground-fault protection system, a switch or circuit breaker used as disconnecting means may not have a pole in the grounded conductor.

(g) *Integrated electrical systems*—(1) *Scope.* Paragraph (g) of this section covers integrated electrical systems, other than unit equipment, in which orderly shutdown is necessary to ensure safe operation. An integrated electrical system as used in this section shall be a unitized segment of an industrial wiring system where all of the following conditions are met:

(i) An orderly shutdown process minimizes employee hazard and equipment damage;

(ii) The conditions of maintenance and supervision ensure that only qualified persons will service the system; and

(iii) Effective safeguards are established and maintained.

(2) *Location of overcurrent devices in or on premises.* Overcurrent devices that are critical to integrated electrical systems need not be readily accessible to employees as required by § 1910.304(f)(1)(iv) if they are located with mounting heights to ensure security from operation by nonqualified persons.

5. Section 1910.399 would be revised to read as follows:

§ 1910.399 Definitions applicable to this subpart.

Acceptable. An installation or equipment is acceptable to the Assistant Secretary of Labor, and approved within the meaning of this Subpart S:

(1) If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory recognized pursuant to § 1910.7; or

(2) With respect to an installation or equipment of a kind that no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another Federal agency, or by a State, municipal, or other local authority responsible for enforcing occupational safety provisions of the National

Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this subpart; or

(3) With respect to custom-made equipment or related installations that are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the Assistant Secretary and his authorized representatives.

Accepted. An installation is "accepted" if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

Accessible. (As applied to wiring methods.) Capable of being removed or exposed without damaging the building structure or finish, or not permanently closed in by the structure or finish of the building. (*See* "concealed" and "exposed.")

Accessible. (As applied to equipment.) Admitting close approach; not guarded by locked doors, elevation, or other effective means. (*See* "Readily accessible.")

Ampacity. The current, in amperes, that a conductor can carry continuously under the conditions of use without exceeding its temperature rating.

Appliances. Utilization equipment, generally other than industrial, normally built in standardized sizes or types, that is installed or connected as a unit to perform one or more functions.

Approved. Acceptable to the authority enforcing this subpart. The authority enforcing this subpart is the Assistant Secretary of Labor for Occupational Safety and Health. The definition of "acceptable" indicates what is acceptable to the Assistant Secretary of Labor, and therefore approved within the meaning of this subpart.

Armored cable. Type AC armored cable is a fabricated assembly of insulated conductors in a flexible metallic enclosure.

Askarel. A generic term for a group of nonflammable synthetic chlorinated hydrocarbons used as electrical insulating media. Askarels of various compositional types are used. Under arcing conditions the gases produced, while consisting predominantly of noncombustible hydrogen chloride, can include varying amounts of combustible gases depending upon the askarel type.

Attachment plug (Plug cap)(Cap). A device that, by insertion in a receptacle, establishes a connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

Automatic. Self-acting, operating by its own mechanism when actuated by some impersonal influence, as, for example, a change in current strength, pressure, temperature, or mechanical configuration.

Bare conductor. See Conductor.

Barrier. A physical obstruction that is intended to prevent contact with equipment or live parts or to prevent unauthorized access to a work area.

Bathroom. An area including a basin with one or more of the following: a toilet, a tub, or a shower.

Bonding (Bonded). The permanent joining of metallic parts to form an electrically conductive path that will ensure electrical continuity and the capacity to conduct safely any current likely to be imposed.

Bonding jumper. A conductor that assures the necessary electrical conductivity between metal parts required to be electrically connected.

Branch circuit. The circuit conductors between the final overcurrent device protecting the circuit and the outlets.

Building. A structure that stands alone or is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.

Cabinet. An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which a swinging door or doors are or can be hung.

Cable tray system. A unit or assembly of units or sections, and associated fittings forming a rigid structural system used to securely fasten or support cables and raceways. Cable tray systems include ladders, troughs, channels, solid bottom trays, and other similar structures.

Cablebus. An assembly of insulated conductors with fittings and conductor terminations in a completely enclosed, ventilated, protective metal housing.

Cell line. An assembly of electrically interconnected electrolytic cells supplied by a source of direct current power.

Cell line attachments and auxiliary equipment. Cell line attachments and auxiliary equipment include, but are not limited to, auxiliary tanks, process piping, ductwork, structural supports, exposed cell line conductors, conduits and other raceways, pumps, positioning equipment, and cell cutout or bypass electrical devices. Auxiliary equipment also includes tools, welding machines, crucibles, and other portable equipment used for operation and maintenance within the electrolytic cell line working zone. In the cell line working zone, auxiliary equipment includes the exposed conductive surfaces of ungrounded cranes and crane-mounted cell-servicing equipment.

Center pivot irrigation machine. A multi-motored irrigation machine that revolves around a central pivot and employs alignment switches or similar devices to control individual motors.

Certified. Equipment is "certified" if it bears a label, tag, or other record of certification that the equipment: (1) has been tested and found by a nationally recognized testing laboratory to meet nationally recognized standards or to be safe for use in a specified manner, or (2) is of a kind whose production is periodically inspected by a nationally recognized testing laboratory and is accepted by the laboratory as safe for its intended use.

Circuit breaker. A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without damage to itself when properly applied within its rating.

Class I locations. Class I locations are those in which flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitable mixtures. Class I locations include the following:

(1) *Class I, Division 1.* A Class I, Division 1 location is a location: (i) In which ignitable concentrations of flammable gases or vapors may exist under normal operating conditions; or (ii) in which ignitable concentrations of such gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or (iii) in which breakdown or faulty operation of equipment or processes might release ignitable concentrations of flammable gases or vapors, and might also cause simultaneous failure of electric equipment.

Note to the definition of "Class I, Division 1:" This classification usually includes locations where volatile flammable liquids or liquefied flammable gases are transferred from one container to another; interiors of spray booths and areas in the vicinity of spraying and painting operations where volatile flammable solvents are used; locations containing open tanks or vats of volatile flammable liquids; drying rooms or compartments for the evaporation of flammable solvents; locations containing fat and oil extraction equipment using volatile flammable solvents; portions of cleaning and dyeing plants where flammable liquids are used; gas generator rooms and other portions of gas manufacturing plants where flammable gas may escape; inadequately ventilated pump rooms for flammable gas or for volatile flammable liquids; the interiors of refrigerators and freezers in which volatile flammable materials are stored in open,

lightly stoppered, or easily ruptured containers; and all other locations where ignitable concentrations of flammable vapors or gases are likely to occur in the course of normal operations.

(2) *Class I, Division 2.* A Class I, Division 2 location is a location: (i) In which volatile flammable liquids or flammable gases are handled, processed, or used, but in which the hazardous liquids, vapors, or gases will normally be confined within closed containers or closed systems from which they can escape only in the event of accidental rupture or breakdown of such containers or systems, or as a result of abnormal operation of equipment; or (ii) in which ignitable concentrations of gases or vapors are normally prevented by positive mechanical ventilation, and which might become hazardous through failure or abnormal operations of the ventilating equipment; or (iii) that is adjacent to a Class I, Division 1 location, and to which ignitable concentrations of gases or vapors might occasionally be communicated unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Note to the definition of "Class I, Division 2:" This classification usually includes locations where volatile flammable liquids or flammable gases or vapors are used, but which would become hazardous only in case of an accident or of some unusual operating condition. The quantity of flammable material that might escape in case of accident, the adequacy of ventilating equipment, the total area involved, and the record of the industry or business with respect to explosions or fires are all factors that merit consideration in determining the classification and extent of each location.

Piping without valves, checks, meters, and similar devices would not ordinarily introduce a hazardous condition even though used for flammable liquids or gases. Locations used for the storage of flammable liquids or a liquefied or compressed gases in sealed containers would not normally be considered hazardous unless also subject to other hazardous conditions.

Electrical conduits and their associated enclosures separated from process fluids by a single seal or barrier are classed as a Division 2 location if the outside of the conduit and enclosures is a nonhazardous location.

(3) *Class I, Zone 0.* A Class I, Zone 0 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are present continuously, or

(ii) Ignitable concentrations of flammable gases or vapors are present for long periods of time.

Note to the definition of "Class I, Zone 0:" As a guide in determining when flammable gases or vapors are present continuously or for long periods of time, refer to *Recommended Practice for Classification of Locations for Electrical Installations of Petroleum Facilities Classified as Class I, Zone 0, Zone 1 or Zone 2,* API RP 505–1996; *Electrical Apparatus for Explosive Gas Atmospheres, Classifications of Hazardous Areas,* IEC 79–10–1995; *Area Classification Code for Petroleum Installations, Model Code—Part 15,* Institute for Petroleum; and *Electrical Apparatus for Explosive Gas Atmospheres, Classifications of Hazardous (Classified) Locations,* ISA S12.24.01–1997.

(4) *Class I, Zone 1.* A Class I, Zone 1 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are likely to exist under normal operating conditions; or

(ii) Ignitable concentrations of flammable gases or vapors may exist frequently because of repair or maintenance operations or because of leakage; or

(iii) Equipment is operated or processes are carried on of such a nature that equipment breakdown or faulty operations could result in the release of ignitable concentrations of flammable gases or vapors and also cause simultaneous failure of electric equipment in a manner that would cause the electric equipment to become a source of ignition; or

(iv) A location that is adjacent to a Class I, Zone 0 location from which ignitable concentrations of vapors could be communicated, unless communication is prevented by adequate positive pressure ventilation from a source of clean air and effective safeguards against ventilation failure are provided.

(5) *Class I, Zone 2.* A Class I, Zone 2 location is a location in which one of the following conditions exists:

(i) Ignitable concentrations of flammable gases or vapors are not likely to occur in normal operation and if they do occur will exist only for a short period; or

(ii) Volatile flammable liquids, flammable gases, or flammable vapors are handled, processed, or used, but in which the liquids, gases, or vapors are normally confined within closed containers or closed systems from which they can escape only as a result of accidental rupture or breakdown of the containers or system or as the result of the abnormal operation of the equipment with which the liquids or gases are handled, processed, or used; or

(iii) Ignitable concentrations of flammable gases or vapors normally are prevented by positive mechanical ventilation, but which may become hazardous as the result of failure or abnormal operation of the ventilation equipment; or

(iv) A location that is adjacent to a Class I, Zone 1 location, from which ignitable concentrations of flammable gases or vapors could be communicated, unless such communication is prevented by adequate positive-pressure ventilation from a source of clean air, and effective safeguards against ventilation failure are provided.

Class II locations. Class II locations are those that are hazardous because of the presence of combustible dust. Class II locations include the following:

(1) *Class II, Division 1.* A Class II, Division 1 location is a location: (i) In which combustible dust is or may be in suspension in the air under normal operating conditions, in quantities sufficient to produce explosive or ignitable mixtures; or (ii) where mechanical failure or abnormal operation of machinery or equipment might cause such explosive or ignitable mixtures to be produced, and might also provide a source of ignition through simultaneous failure of electric equipment, through operation of protection devices, or from other causes; or (iii) in which combustible dusts of an electrically conductive nature may be present.

Note to the definition of "Class II, Division 1": This classification may include areas of grain handling and processing plants, starch plants, sugar-pulverizing plants, malting plants, hay-grinding plants, coal pulverizing plants, areas where metal dusts and powders are produced or processed, and other similar locations that contain dust producing machinery and equipment (except where the equipment is dust-tight or vented to the outside). These areas would have combustible dust in the air, under normal operating conditions, in quantities sufficient to produce explosive or ignitable mixtures. Combustible dusts that are electrically nonconductive include dusts produced in the handling and processing of grain and grain products, pulverized sugar and cocoa, dried egg and milk powders, pulverized spices, starch and pastes, potato and wood flour, oil meal from beans and seed, dried hay, and other organic materials which may produce combustible dusts when processed or handled. Dusts containing magnesium or aluminum are particularly hazardous, and the use of extreme caution is necessary to avoid ignition and explosion.

(2) *Class II, Division 2.* A Class II, Division 2 location is a location where: (i) Combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitable mixtures, and dust accumulations will normally be insufficient to interfere with the normal operation of electric equipment or other

apparatus, but combustible dust may be in suspension in the air as a result of infrequent malfunctioning of handling or processing equipment, and (ii) resulting combustible dust accumulations on, in, or in the vicinity of the electric equipment may be sufficient to interfere with the safe dissipation of heat from electric equipment or may be ignitable by abnormal operation or failure of electric equipment.

Note to the definition of "Class II, Division 2": This classification includes locations where dangerous concentrations of suspended dust would not be likely, but where dust accumulations might form on or in the vicinity of electric equipment. These areas may contain equipment from which appreciable quantities of dust would escape under abnormal operating conditions or be adjacent to a Class II Division 1 location, as described above, into which an explosive or ignitable concentration of dust may be put into suspension under abnormal operating conditions.

Class III locations. Class III locations are those that are hazardous because of the presence of easily ignitable fibers or flyings, but in which such fibers or flyings are not likely to be in suspension in the air in quantities sufficient to produce ignitable mixtures. Class III locations include the following:

(1) *Class III, Division 1.* A Class III, Division 1 location is a location in which easily ignitable fibers or materials producing combustible flyings are handled, manufactured, or used.

Note to the definition of "Class III, Division 1": Such locations usually include some parts of rayon, cotton, and other textile mills; combustible fiber manufacturing and processing plants; cotton gins and cotton-seed mills; flax-processing plants; clothing manufacturing plants; woodworking plants, and establishments; and industries involving similar hazardous processes or conditions.

Easily ignitable fibers and flyings include rayon, cotton (including cotton linters and cotton waste), sisal or henequen, istle, jute, hemp, tow, cocoa fiber, oakum, baled waste kapok, Spanish moss, excelsior, and other materials of similar nature.

(2) *Class III, Division 2.* A Class III, Division 2 location is a location in which easily ignitable fibers are stored or handled, other than in the process of manufacture.

Collector ring. An assembly of slip rings for transferring electric energy from a stationary to a rotating member.

Concealed. Rendered inaccessible by the structure or finish of the building. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them. (*See* Accessible. (As applied to wiring methods.))

Conductor—(1) *Bare.* A conductor having no covering or electrical insulation whatsoever.

(2) *Covered.* A conductor encased within material of composition or thickness that is not recognized by this subpart as electrical insulation.

(3) *Insulated.* A conductor encased within material of composition and thickness that is recognized by this subpart as electrical insulation.

Conduit body. A separate portion of a conduit or tubing system that provides access through one or more removable covers to the interior of the system at a junction of two or more sections of the system or at a terminal point of the system. Boxes such as FS and FD or larger cast or sheet metal boxes are not classified as conduit bodies.

Controller. A device or group of devices that serves to govern, in some predetermined manner, the electric power delivered to the apparatus to which it is connected.

Covered conductor. See Conductor.

Cutout. (Over 600 volts, nominal.) An assembly of a fuse support with either a fuseholder, fuse carrier, or disconnecting blade. The fuseholder or fuse carrier may include a conducting element (fuse link), or may act as the disconnecting blade by the inclusion of a nonfusible member.

Cutout box. An enclosure designed for surface mounting and having swinging doors or covers secured directly to and telescoping with the walls of the box proper. (*See* Cabinet.)

Damp location. See Location.

Dead front. Without live parts exposed to a person on the operating side of the equipment

Deenergized. Free from any electrical connection to a source of potential difference and from electrical charge; not having a potential different from that of the earth.

Device. A unit of an electrical system that is intended to carry but not utilize electric energy.

Dielectric heating. The heating of a nominally insulating material due to its own dielectric losses when the material is placed in a varying electric field.

Disconnecting means. A device, or group of devices, or other means by which the conductors of a circuit can be disconnected from their source of supply.

Disconnecting (or Isolating) switch. (Over 600 volts, nominal.) A mechanical switching device used for isolating a circuit or equipment from a source of power.

Electrolytic cell line working zone. The cell line working zone is the space envelope wherein operation or maintenance is normally performed on or in the vicinity of exposed energized surfaces of electrolytic cell lines or their attachments.

Electrolytic cells. A tank or vat in which electrochemical reactions are caused by applying energy for the purpose of refining or producing usable materials.

Enclosed. Surrounded by a case, housing, fence or walls that will prevent persons from accidentally contacting energized parts.

Enclosure. The case or housing of apparatus, or the fence or walls surrounding an installation to prevent personnel from accidentally contacting energized parts, or to protect the equipment from physical damage.

Energized. Electrically connected to a source of potential difference.

Equipment. A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

Equipment grounding conductor. See Grounding conductor, equipment.

Explosion-proof apparatus. Apparatus enclosed in a case that is capable of withstanding an explosion of a specified gas or vapor that may occur within it and of preventing the ignition of a specified gas or vapor surrounding the enclosure by sparks, flashes, or explosion of the gas or vapor within, and that operates at such an external temperature that it will not ignite a surrounding flammable atmosphere.

Exposed. (As applied to live parts.) Capable of being inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (*See* Accessible and Concealed.)

Exposed. (As applied to wiring methods.) On or attached to the surface, or behind panels designed to allow access. (*See* Accessible. (As applied to wiring methods.))

Exposed. (For the purposes of § 1910.308(e).) Where the circuit is in such a position that in case of failure of supports or insulation, contact with another circuit may result.

Externally operable. Capable of being operated without exposing the operator to contact with live parts.

Feeder. All circuit conductors between the service equipment, the source of a separate derived system, or other power supply source and the final branch-circuit overcurrent device.

Fitting. An accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.

Fuse. (Over 600 volts, nominal.) An overcurrent protective device with a circuit opening fusible part that is heated and severed by the passage of overcurrent through it. A fuse comprises all the parts that form a unit capable of performing the prescribed functions. It may or may not be the complete device necessary to connect it into an electrical circuit.

Ground. A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to the earth or to some conducting body that serves in place of the earth.

Grounded, effectively. (Over 600 volts, nominal.) Permanently connected to earth through a ground connection of sufficiently low impedance and having sufficient ampacity that ground fault current that may occur cannot build up to voltages dangerous to personnel.

Grounded conductor. A system or circuit conductor that is intentionally grounded.

Grounding conductor. A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment. The conductor used to connect the noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system grounded conductor, the grounding electrode conductor, or both, at the service equipment or at the source of a separately derived system.

Grounding electrode conductor. The conductor used to connect the grounding electrode to the equipment grounding conductor, to the grounded conductor, or to both, of the circuit at the service equipment or at the source of a separately derived system.

Ground-fault circuit-interrupter. A device intended for the protection of personnel that functions to deenergize a circuit or a portion of a circuit within an established period of time when a current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of approach to a point of danger or contact by persons or objects.

Health care facilities. Buildings or portions of buildings and mobile homes that contain, but are not limited to, hospitals, nursing homes, extended care facilities, clinics, and medical and dental offices, whether fixed or mobile.

Heating equipment. For the purposes of § 1910.306(g), the term "heating equipment" includes any equipment used for heating purposes if heat is generated by induction or dielectric methods.

Hoistway. Any shaftway, hatchway, well hole, or other vertical opening or space that is designed for the operation of an elevator or dumbwaiter.

Identified (as applied to equipment). Approved as suitable for the specific purpose, function, use, environment, or application, where described in a particular requirement.

Note to the definition of "identified": Some examples of ways to determine suitability of equipment for a specific purpose, environment, or application include investigations by a nationally recognized testing laboratory (through listing and labeling), and inspection agency, or other organization recognized under the definition of "acceptable."

Induction heating. The heating of a nominally conductive material due to its own I^2R losses when the material is placed in a varying electromagnetic field.

Insulated. Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Insulated conductor. See Conductor, Insulated.

Interrupter switch. (Over 600 volts, nominal.) A switch capable of making, carrying, and interrupting specified currents.

Irrigation Machine. An electrically driven or controlled machine, with one or more motors, not hand portable, and used primarily to transport and distribute water for agricultural purposes.

Isolated. (As applied to location.) Not readily accessible to persons unless special means for access are used.

Isolated power system. A system comprising an isolating transformer or its equivalent, a line isolation monitor, and its ungrounded circuit conductors.

Labeled. Equipment is "labeled" if there is attached to it a label, symbol, or other identifying mark of a nationally recognized testing laboratory:

(1) That makes periodic inspections of the production of such equipment, and

(2) Whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.

Lighting outlet. An outlet intended for the direct connection of a lampholder, a lighting fixture, or a pendant cord terminating in a lampholder.

Line-clearance tree trimming. The pruning, trimming, repairing, maintaining, removing, or clearing of trees or cutting of brush that is within 305 cm (10 ft) of electric supply lines and equipment.

Listed. Equipment is "listed" if it is of a kind mentioned in a list that:

(1) Is published by a nationally recognized laboratory that makes periodic inspection of the production of such equipment, and

(2) States that such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner.

Live parts. Electric conductors, buses, terminals, or components that are energized.

Location—(1) *Damp location.* Partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold-storage warehouses.

(2) *Dry location.* A location not normally subject to dampness or wetness. A location classified as dry may be temporarily subject to dampness or wetness, as in the case of a building under construction.

(3) *Wet location.* Installations underground or in concrete slabs or masonry in direct contact with the earth, and locations subject to saturation with water or other liquids, such as vehicle-washing areas, and locations unprotected and exposed to weather.

Medium voltage cable. Type MV cable is a single or multiconductor solid dielectric insulated cable rated 2001 volts or higher.

Metal-clad cable. Type MC cable is a factory assembly of one or more insulated circuit conductors with or without optical fiber members enclosed in an armor of interlocking metal tape, or a smooth or corrugated metallic sheath.

Mineral-insulated metal-sheathed cable. Type MI, mineral-insulated metal-sheathed, cable is a factory assembly of one or more conductors insulated with a highly compressed refractory mineral insulation and enclosed in a liquidtight and gastight continuous copper sheath.

Mobile X-ray. X-ray equipment mounted on a permanent base with wheels or casters or both for moving while completely assembled.

Motor control center. An assembly of one or more enclosed sections having a common power bus and principally containing motor control units.

Nonmetallic-sheathed cable. Nonmetallic-sheathed cable is a factory assembly of two or more insulated conductors having an outer sheath of

moisture resistant, flame-retardant, nonmetallic material. Nonmetallic sheathed cable is manufactured in the following types:

(1) *Type NM.* The overall covering has a flame-retardant and moisture-resistant finish.

(2) *Type NMC.* The overall covering is flame-retardant, moisture-resistant, fungus-resistant, and corrosion-resistant.

Oil (filled) cutout. (Over 600 volts, nominal.) A cutout in which all or part of the fuse support and its fuse link or disconnecting blade are mounted in oil with complete immersion of the contacts and the fusible portion of the conducting element (fuse link), so that arc interruption by severing of the fuse link or by opening of the contacts will occur under oil.

Open wiring on insulators. Open wiring on insulators is an exposed wiring method using cleats, knobs, tubes, and flexible tubing for the protection and support of single insulated conductors run in or on buildings, and not concealed by the building structure.

Outlet. A point on the wiring system at which current is taken to supply utilization equipment.

Outline lighting. An arrangement of incandescent lamps or electric discharge lighting to outline or call attention to certain features, such as the shape of a building or the decoration of a window.

Overcurrent. Any current in excess of the rated current of equipment or the ampacity of a conductor. It may result from overload, short circuit, or ground fault.

Overhaul means to perform a major replacement, modification, repair, or rehabilitation similar to that involved when a new building or facility is built, a new wing is added, or an entire floor is renovated.

Overload. Operation of equipment in excess of normal, full-load rating, or of a conductor in excess of rated ampacity that, when it persists for a sufficient length of time, would cause damage or dangerous overheating. A fault, such as a short circuit or ground fault, is not an overload. (*See* Overcurrent.)

Panelboard. A single panel or group of panel units designed for assembly in the form of a single panel; including buses, automatic overcurrent devices, and with or without switches for the control of light, heat, or power circuits; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front. (*See* Switchboard.)

Permanently installed decorative fountains and reflection pools. Pools that are constructed in the ground, on the ground, or in a building in such a manner that the fountain or pool cannot be readily disassembled for storage, whether or not served by electrical circuits of any nature. These units are primarily constructed for their aesthetic value and are not intended for swimming or wading.

Permanently installed swimming, wading, and therapeutic pools. Pools that are constructed in the ground or partially in the ground, and all other capable of holding water in a depth greater than 1.07 m (42 in.). The definition also applies to all pools installed inside of a building, regardless of water depth, whether or not served by electric circuits of any nature.

Portable X-ray. X-ray equipment designed to be hand-carried.

Power and control tray cable. Type TC power and control tray cable is a factory assembly of two or more insulated conductors, with or without associated bare or covered grounding conductors under a nonmetallic sheath, approved for installation in cable trays, in raceways, or where supported by a messenger wire.

Power fuse. (Over 600 volts, nominal.) See Fuse.

Power-limited tray cable. Type PLTC nonmetallic-sheathed power limited tray cable is a factory assembly of two or more insulated conductors under a nonmetallic jacket.

Power outlet. An enclosed assembly, which may include receptacles, circuit breakers, fuseholders, fused switches, buses, and watt-hour meter mounting means, that is intended to supply and control power to mobile homes, recreational vehicles, or boats or to serve as a means for distributing power needed to operate mobile or temporarily installed equipment.

Premises wiring. (Premises wiring system.) That interior and exterior wiring, including power, lighting, control, and signal circuit wiring together with all of their associated hardware, fittings, and wiring devices, both permanently and temporarily installed, that extends from the service point of utility conductors or source of power such as a battery, a solar photovoltaic system, or a generator, transformer, or converter to the outlets. Such wiring does not include wiring internal to appliances, fixtures, motors, controllers, motor control centers, and similar equipment.

Qualified person. A person who is familiar with the construction and operation of the equipment and the hazards involved.

Note 1 to the definition of "qualified person:" Whether an employee is considered to be a "qualified person" will depend upon various circumstances in the workplace. It is possible and, in fact, likely for an individual to be considered "qualified" with regard to certain equipment in the workplace, but "unqualified" as to other equipment.(See 1910.332(b)(3) for training requirements that specifically apply to qualified persons.)

Note 2 to the definition of "qualified person:" An employee who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a qualified person is considered to be a qualified person for the performance of those duties.

Raceway. An enclosed channel of metal or nonmetallic materials designed expressly for holding wires, cables, or busbars, with additional functions as permitted in this standard. Raceways include, but are not limited to, rigid metal conduit, rigid nonmetallic conduit, intermediate metal conduit, liquidtight flexible conduit, flexible metallic tubing, flexible metal conduit, electrical metallic tubing, electrical nonmetallic tubing, underfloor raceways, cellular concrete floor raceways, cellular metal floor raceways, surface raceways, wireways, and busways.

Readily accessible. Capable of being reached quickly for operation, renewal, or inspections, so that those needing ready access do not have to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (*See* Accessible.)

Receptacle. A receptacle is a contact device installed at the outlet for the connection of an attachment plug. A single receptacle is a single contact device with no other contact device on the same yoke. A multiple receptacle is two or more contact devices on the same yoke.

Receptacle outlet. An outlet where one or more receptacles are installed.

Remote-control circuit. Any electric circuit that controls any other circuit through a relay or an equivalent device.

Sealable equipment. Equipment enclosed in a case or cabinet that is provided with a means of sealing or locking so that live parts cannot be made accessible without opening the enclosure. The equipment may or may not be operable without opening the enclosure.

Separately derived system. A premises wiring system whose power is derived from a battery, a solar photovoltaic system, or from a generator, transformer, or converter windings, and that has no direct electrical connection, including a solidly connected grounded circuit

conductor, to supply conductors originating in another system.

Service. The conductors and equipment for delivering electric energy from the serving utility to the wiring system of the premises served.

Service cable. Service conductors made up in the form of a cable.

Service conductors. The conductors from the service point to the service disconnecting means.

Service drop. The overhead service conductors from the last pole or other aerial support to and including the splices, if any, connecting to the service-entrance conductors at the building or other structure.

Service-entrance cable. Service-entrance cable is a single conductor or multiconductor assembly provided with or without an overall covering, primarily used for services, and is of the following types:

(1) *Type SE.* Type SE, having a flame-retardant, moisture resistant covering

(2) *Type USE.* Type USE, identified for underground use, having a moisture-resistant covering, but not required to have a flame-retardant covering. Cabled, single-conductor, Type USE constructions recognized for underground use may have a bare copper conductor cabled with the assembly. Type USE single, parallel, or cable conductor assemblies recognized for underground use may have a bare copper concentric conductor applied. These constructions do not require an outer overall covering.

Service-entrance conductors, overhead system. The service conductors between the terminals of the service equipment and a point usually outside the building, clear of building walls, where joined by tape or splice to the service drop.

Service entrance conductors, underground system. The service conductors between the terminals of the service equipment and the point of connection to the service lateral.

Service equipment. The necessary equipment, usually consisting of one or more circuit breakers or switches and fuses, and their accessories, connected to the load end of service conductors to a building or other structure, or an otherwise designated area, and intended to constitute the main control and cutoff of the supply.

Service point. The point of connection between the facilities of the serving utility and the premises wiring.

Shielded nonmetallic-sheathed cable. Type SNM, shielded nonmetallic-sheathed cable is a factory assembly of two or more insulated conductors in an extruded core of moisture-resistant, flame-resistant nonmetallic material, covered with an overlapping spiral metal tape and wire shield and jacketed with an extruded moisture-, flame-, oil-, corrosion-, fungus-, and sunlight-resistant nonmetallic material.

Show window. Any window used or designed to be used for the display of goods or advertising material, whether it is fully or partly enclosed or entirely open at the rear and whether or not it has a platform raised higher than the street floor level.

Signaling circuit. Any electric circuit that energizes signaling equipment.

Storable swimming or wading pool. A pool that is constructed on or above the ground and is capable of holding water to a maximum depth of 1.07 m (42 in.), or a pool with nonmetallic, molded polymeric walls or inflatable fabric walls regardless of dimension.

Switchboard. A large single panel, frame, or assembly of panels on which are mounted, on the face or back, or both, switches, overcurrent and other protective devices, buses, and usually instruments. Switchboards are generally accessible from the rear as well as from the front and are not intended to be installed in cabinets. (*See* Panelboard.)

Switch. (1) *General-use switch.* A switch intended for use in general distribution and branch circuits. It is rated in amperes, and it is capable of interrupting its rated current at its rated voltage.

(2) *General-use snap switch.* A form of general-use switch constructed so that it can be installed in device boxes or on box covers, or otherwise used in conjunction with wiring systems recognized by this subpart.

(3) *Isolating switch.* A switch intended for isolating an electric circuit from the source of power. It has no interrupting rating, and it is intended to be operated only after the circuit has been opened by some other means.

(4) *Motor-circuit switch.* A switch, rated in horsepower, capable of interrupting the maximum operating overload current of a motor of the same horsepower rating as the switch at the rated voltage.

Switching devices. (Over 600 volts, nominal.) Devices designed to close and open one or more electric circuits. Included in this category are circuit breakers, cutouts, disconnecting (or isolating) switches, disconnecting means, interrupter switches, and oil (filled) cutouts.

Transportable X-ray. X-ray equipment installed in a vehicle or that may readily be disassembled for transport in a vehicle.

Utilization equipment. Equipment that utilizes electric energy for electronic, electromechanical, chemical, heating, lighting, or similar purposes.

Utilization system. A system that provides electric power and light for employee workplaces, and includes the premises wiring system and utilization equipment.

Ventilated. Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes, or vapors.

Volatile flammable liquid. A flammable liquid having a flash point below 38°C (100°F), or a flammable liquid whose temperature is above its flash point, or a Class II combustible liquid having a vapor pressure not exceeding 276 kPa (40 psia) at 38°C (100°F) and whose temperature is above its flash point.

Voltage (of a circuit). The greatest root-mean-square (rms) (effective) difference of potential between any two conductors of the circuit concerned.

Voltage, nominal. A nominal value assigned to a circuit or system for the purpose of conveniently designating its voltage class (as 120/240 volts, 480Y/277 volts, 600 volts). The actual voltage at which a circuit operates can vary from the nominal within a range that permits satisfactory operation of equipment.

Voltage to ground. For grounded circuits, the voltage between the given conductor and that point or conductor of the circuit that is grounded; for ungrounded circuits, the greatest voltage between the given conductor and any other conductor of the circuit.

Watertight. So constructed that moisture will not enter the enclosure.

Weatherproof. So constructed or protected that exposure to the weather will not interfere with successful operation. Rainproof, raintight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wireways. Wireways are sheet-metal troughs with hinged or removable covers for housing and protecting electric wires and cable and in which conductors are laid in place after the wireway has been installed as a complete system.

6. Appendix A to Subpart S of part 1910 would be revised to read as follows:

Appendix A to Subpart S of Part 1910—References for Further Information

The following references provide nonmandatory information that can be helpful in understanding and complying with Subpart S:

ANSI/API RP 500–1998 (2002) Recommended Practice for Classification of

Locations for Electrical Installations at Petroleum Facilities Classified as Class I Division 1 and Division 2.

ANSI/API RP 505–1998 (2002) Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2.

ANSI/ASME A17.1–2000 Safety Code for Elevators and Escalators.

ANSI/ASME B30.2–2001 Safety Code for Overhead and Gantry Cranes.

ANSI/ASME B30.3–1996 Construction Tower Cranes.

ANSI/ASME B30.4–2003 Portal, Tower, and Pedestal Cranes.

ANSI/ASME B30.5–2000 Mobile And Locomotive Cranes.

ANSI/ASME B30.6–2003 Derricks.

ANSI/ASME B30.7–2001 Base Mounted Drum Hoists.

ANSI/ASME B30.8–2000 Floating Cranes And Floating Derricks.

ANSI/ASME B30.11–1998 Monorails And Underhung Cranes.

ANSI/ASME B30.12–2001 Handling Loads Suspended from Rotorcraft.

ANSI/ASME B30.13–2003 2003 Storage/Retrieval (S/R) Machines and Associated Equipment.

ANSI/ASME B30.15–Safety Code for Mobile Hydraulic Cranes.

ANSI/ASME B30.16–2003 Overhead Hoists (Underhung).

ANSI/IEEE C2–2002 National Electrical Safety Code.

ANSI K61.1–1999 Safety Requirements for the Storage and Handling of Anhydrous Ammonia.

ANSI/UL 913–2002 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations.

ANSI/UL 2279–1997 Electrical Equipment for Use in Class I, Zone 0, 1 and 2 Hazardous (Classified) Locations.

ASTM D3176–1989 (2002) Standard Practice for Ultimate Analysis of Coal and Coke.

ASTM D3180–1989 (2002) Standard Practice for Calculating Coal and Coke Analyses from As-Determined to Different Bases.

NFPA 20–1999 Standard for the Installation of Stationary Pumps for Fire Protection.

NFPA 30–2000 Flammable and Combustible Liquids Code.

NFPA 32–2000 Standard for Drycleaning Plants.

NFPA 33–2000 Standard for Spray Application Using Flammable or Combustible Materials.

NFPA 34–2000 Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids.

NFPA 35–1999 Standard for the Manufacture of Organic Coatings.

NFPA 36–2001 Standard for Solvent Extraction Plants.

NFPA 40–2001 Standard for the Storage and Handling of Cellulose Nitrate Film.

NFPA 58–2001 Liquefied Petroleum Gas Code.

NFPA 59–2001 Utility LP-Gas Plant Code.

NFPA 70–2002 National Electrical Code.

NFPA 70E–2000 Standard for Electrical Safety Requirements for Employee Workplaces.

NFPA 77–2000 Recommended Practice on Static Electricity.

NFPA 80–1999 Standard for Fire Doors and Fire Windows.

NFPA 88A–2002 Standard for Parking Structures.

NFPA 91–1999 Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids.

NFPA 101–2003 Life Safety Code.

NFPA 496–1998 Standard for Purged and Pressurized Enclosures for Electrical Equipment.

NFPA 497–1997 Recommended Practice for the Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas.

NFPA 505–2002 Fire Safety Standard for Powered Industrial Trucks Including Type Designations, Areas of Use, Conversions, Maintenance, and Operation.

NFPA 820–1999 Standard for Fire Protection in Wastewater Treatment and Collection Facilities.

NMAB 353–1–1979 Matrix of Combustion-Relevant Properties and Classification of Gases, Vapors, and Selected Solids.

NMAB 353–2–1979 Test Equipment for Use in Determining Classifications of Combustible Dusts.

NMAB 353–3–1980 Classification of Combustible Dust in Accordance with the National Electrical Code.

Appendices B and C [Removed]

7. Appendices B and C to Subpart S of part 1910 would be removed.

[FR Doc. 04–7033 Filed 4–2–04; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Monday,
April 5, 2004

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 983
Pistachios Grown in California; Order Regulating Handling; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket Nos. AO–F&V–983–2; FV02–983–01]

Pistachios Grown in California; Order Regulating Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a marketing agreement and order (order) for pistachios grown in California. The order sets standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. An eleven-member committee, consisting of eight producers, two handlers, and one public member, will locally administer the program. The program will be financed by assessments on handlers of pistachios grown in the production area. The program is designed to enhance grower returns through the delivery of higher-quality pistachios to consumers.

DATES: This rule is effective April 6, 2004, except for §§ 983.38 through 983.46, which are effective August 1, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 19, 2002, and published in the June 26, 2002, issue of the **Federal Register** (67 FR 43045); Recommended Decision and Opportunity to File Written Exceptions issued on July 23, 2003, and published in the August 4, 2003, issue of the **Federal Register** (68 FR 45990); and Secretary's Decision and Referendum Order issued on December 11, 2003, and published in the December 30, 2003, issue of the **Federal Register** (68 FR 75320).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The marketing agreement and order regulating the handling of pistachios grown in California is based on the record of a public hearing held July 23–25, 2002, in Fresno, California. The hearing was held to receive evidence on the proposed marketing order from producers, handlers, and other interested parties located throughout the production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on June 26, 2002.

The proposal was submitted for consideration to the Department by the Proponents Committee (proponents), a group representing the majority of producers and handlers of pistachios in California. The proponents are independent of the California Pistachio Commission and the Western Pistachio Association.

The order provides the California pistachio industry with a tool to regulate the quality of pistachios handled in California. This includes preventing pistachios containing aflatoxin above the permitted maximum tolerance level of 15 parts per billion (ppb) from entering the market place. The order also precludes defective and small pistachios from being sold. Under the order, testing and certification of pistachios for quality (including aflatoxin) will be mandatory. The mandatory regulatory program is designed to provide the industry with an effective means of ensuring product quality, thereby enhancing customer satisfaction.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on July 23, 2003, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by September 3, 2003. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by October 3, 2003.

One exception (and as corrected) was filed during the period provided on behalf of the proponents. The exception expressed general support of the marketing order and requested that several changes be made to the proposed order provisions, including that one proposed definition be revised, one definition be deleted, and several editorial and clarifying changes be made. The specifics of the exception were addressed in the Secretary's Decision and Referendum Order issued on December 11, 2003, and published in the **Federal Register** on December 30, 2003.

That document also directed that a referendum be conducted during the period January 12 through February 9, 2004, among growers of California pistachios to determine whether they favored issuance of the order. In the referendum, the order was favored by more than two-thirds of the growers voting in the referendum by number and volume.

The marketing agreement was mailed to all pistachio handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of pistachios handled by all handlers during the representative period of September 1, 2002, through August 31, 2003.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders are unique in that they are normally brought through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that will be regulated under the pistachio order, are defined as those

with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the pistachio marketing order program on small businesses. The record evidence is that while the program will impose some costs on the regulated parties, those costs will be outweighed by the benefits expected to accrue to the U.S. pistachio industry.

The record indicates that there are approximately 647 pistachio producers, which includes the members of the one existing pistachio producer cooperative. There are 19 handlers who process pistachios in the production area.

Statistics prepared by the California Pistachio Commission and submitted as evidence at the hearing show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 producers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds.

Using an average grower price of $1.10 per pound, 91 percent of the California pistachio producers receive less than $550,000 annually, and 9 percent receive more than $550,000 annually. Thus, at least 91 percent of these producers would meet SBA's definition of a small agricultural producer.

The record shows that 12 California pistachio handlers (63 percent of the total) handle less than 1,000,000 pounds per year; 4 handlers (21%) handle between 1,000,000 and 10,000,000 pounds; and 3 handlers (16%) handle more than 10,000,000 pounds annually. The largest handler processes over 50 percent of industry production.

Using an average handler price of $1.80 per pound, 63 percent of the pistachio handlers would receive annual receipts of less than $1.8 million, 2 percent would receive between $1.8 and $18.0 million, and 16 percent would receive more than $18.0 million. At least 12 of the pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition.

Record evidence concerning pistachio production and handling costs provide an understanding of the California pistachio industry and potential impacts of implementing the order. Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield.

Although increasing yields have led to an increasing overall value of California pistachio production, producers must maintain a level of return per pound harvested that covers the cost of production in order for their pistachio operations to remain economically viable. Witnesses testified that maintaining a high level of quality product in the market should lead to increasing consumer demand and greater stability in producer returns.

Evidence suggests that poor quality pistachios impact the demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as "poor quality" by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and customer comments presented by handler witnesses demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

Minimizing the level of aflatoxin in California pistachios is another significant quality factor, as aflatoxin is a known carcinogen. Consumer concerns over aflatoxin can affect their perception of pistachio quality, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the geographic origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin in pistachios should be useful in bolstering consumer confidence in the quality of California pistachios.

Pistachio acreage has been consistently increasing in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.* acres less than 7 years old, not yet in full production) has also shown consistent growth in recent years, rising from 13,400 acres in 1995 to 23,500 acres in 2001, a 75 percent increase. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,110 pounds; by 1996–2000, this average had increased to 2,512 pounds.

Higher yields and increasing acreage has resulted in increasing production. According to information submitted by the CPC, production in 2000 totaled 242 million pounds, a 64-percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60-percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is essential to the continued economic well being of the California pistachio industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide them with a regulatory structure to monitor and assure that minimum quality standards are not compromised as production of California pistachios increases.

The relationship between product quality, consumer demand and producer returns in the pistachio industry was demonstrated at the hearing. Pistachio production is not only costly in terms of initial investment and cultural costs, but it is highly unpredictable in terms of producer returns. Between the initial processes of cleaning, hulling, sorting and drying, a significant portion of the initial volume harvested is reduced. This volume is further reduced as the handling process reaches its final stages of sorting for quality and final preparation for market. Witnesses explained that ultimate pistachio sales are based on approximately 30 percent of the volume initially harvested from the field. Because of this, witnesses stated that the process of extracting the highest quality portion of the harvest, and ensuring consumer satisfaction with that product, is crucial to determining the value of the crop.

Pistachio production is similar to other nut crops in that yield and total production vary substantially from year to year because of the alternate bearing nature of pistachio trees resulting in cyclical high and low production years. Total value and value per acre are generally higher in higher yielding years. Conversely, grower return per pound is generally higher in low yielding years.

Producer returns and total crop value are also dependent on the percentage of harvest that is either "open shell" or "closed shell." Each harvest yields a certain percentage of nuts that have not naturally opened prior to cultivation. These nuts are classified as "closed shell," "shelling stock" or "non-splits," and have a lower market value than those nuts that are naturally split, or "open shell." The proportion of open-shells is a key factor in year-to-year changes in the total value of production.

Economic evidence presented at the hearing, based on data from the National Agricultural Statistics Service (NASS) and the CPC, indicates that trends for total crop value and value per bearing acre have been increasing over the past 20 years. In 1980, the pistachio crop in California was valued at $55.8 million. By 2000, total crop value had increased more than four-fold, reaching $245 million. These gains are attributed to increases in both total pistachio producing acreage and yield per acre. Average value per bearing acre increased from $1,642 per acre in 1980–1984 to $2,665 per acre in 1996–2000.

According to CPC historical price data, price per pound has gradually decreased over the past 20 years, ranging from a high of $2.05 per pound in 1980 to a low of $0.99 per pound in 2001. According to the record, the order will assist in improving producer returns for pistachios. The order will not only assist in fortifying consumer demand by ensuring consumer satisfaction with product quality, but mandatory quality and aflatoxin requirements are also likely to boost domestic prices by culling lower quality pistachios, which tend to have price-depressing effects, from the market.

A University of California Cooperative Extension study presented as part of record evidence estimates total cost of production in 2001 at $2,643 per acre. According to industry data, the average grower return (value per bearing acre) for 1998–2001 was $2,619. This average revenue estimate is just below the Extension study's $2,643 estimate of typical cost. Record evidence indicates that over that 4-year period, the lowest value per bearing acre was $2,137 in 2001 and the highest was $3,207 in 2000.

Witnesses supplied an additional set of cost estimates, which ranged from a low-cost operation of $2,350 per acre to a high of $3,400 per acre. In their testimony, total costs of production were divided into three categories: the costs of orchard establishment, cultural costs and administrative costs. Establishment costs, or the overall cost to develop an acre of pistachios until revenues exceed growing expenses, were estimated at between $10,000 and $15,000, with an average tree maturation period of 7 years. In order to recover these investment costs, the hearing record states that producers generally target an 11% return on investment, estimated at between $1,100 and $1,650 per acre. Annual per acre cultural costs average between $1,100 and $1,600, once the trees are productive. Administrative costs include the cost of farm management and crop financing, and can vary between $150 and $200 per acre. The sum of cultural and administrative costs therefore range from $1,250 to $1,800.

Grower price per pound averaged approximately $1.10 between 1997 and 2001. Given that $1.10 average grower price and the cost estimates above, a producer would need to harvest an average of at least 2,000 pounds per acre to cover total production costs for the low-cost operation ($2,350 per acre). A producer would need to harvest at least 1,136 pounds per acre to cover the cultural and administrative costs of $1,250 per acre (not including a return on investment).

The CPC Annual Report for Crop Year 2001–2002 reveals that 6 out of 26 California counties with pistachio production yielded on average more than 2,000 pounds per acre between 1998 and 2001. These six counties, which together represented over 88 percent of total California pistachio production in 2000, are Colusa, Sutter, Madera, Fresno, Kings and Kern. Glenn, Butte, Placer, Yolo, Contra Costa, San Joaquin, Calaveras, Stanislaus, Merced, Tulare and Santa Barbara counties yield on average between 1,000 to 2,000 pounds per acre and represent roughly 12 percent of total state production. Shasta, Tehama, Yuba, Solano, Sacramento, San Luis Obispo, Los Angeles, San Bernardino and Riverside counties yield on average less than 1,000 pounds per acre and represent less than one percent of California pistachio production.

Given the assumptions made above, approximately 88 percent of the industry is covering total costs of production. Conversely, roughly 12 percent of the industry is currently covering cultural costs but not generating a return on their investment.

Simulation Model

Record evidence includes an economic analysis presented by Dr. Daniel Sumner, University of California-Davis, on the potential impacts of the marketing order provisions. Dr. Sumner presented a cost-benefit analysis based on a simulation model, the purpose of which was to provide a framework for comparing costs of compliance to the benefits of improved quality through implementation of the standards.

Cost Estimates

Dr. Sumner's presentation focused on the regulatory features of the marketing order: (1) Mandatory testing of pistachios for the presence of aflatoxin, with a maximum allowable tolerance of 15 ppb; and (2) mandatory minimum quality standards. The quality standards specify minimum size and maximum allowable defects.

According to record testimony, the major costs associated with these features are the cost of aflatoxin testing and the cost of USDA presence in the handlers' plant to inspect and sample lots of pistachios. Expected benefits identified by the witnesses are an increase in consumer confidence in pistachios as a result of aflatoxin regulation, and the combined increases in consumer demand for pistachios due to mandatory USDA regulation and stringent quality standards.

Dr. Sumner's analysis took into account many of the variables presented in testimony by other witnesses describing typical production and processing costs, and presented a weighted average cost computation for marketing order compliance. The average cost of compliance, as identified by several witnesses and reiterated in Dr. Sumner's analysis, is approximately one half cent per pound of domestic pistachio production, or $0.00525 per pound.

Record evidence suggests that the cost of having a USDA inspector in the plant, including mileage plus the standard fee per hour, is approximately $291 per day for the largest plants (which process about 80 percent of total production). Total production for the domestic market that would be processed by the largest plants (those that process over 10 million pounds annually) is estimated at 136 million pounds. If an average lot is 40,000 pounds (the most common lot size for testing cited by the largest handlers), then 3,400 lots would need to be tested to account for all 136 million pounds (166.67 million pounds times 80 per cent). If a USDA official were to test 5.5 lots per day, then 618 person-days would be needed to test all of the lots. Multiplying $291 per day times 618 person-days yields an annual cost of $180,000 for testing 136 million pounds. Dividing the $180,000 annual cost by 136 million pounds yields an estimated cost per pound of $0.0013 for having USDA personnel in the plant to sample and certify that the pistachios meet minimum quality standards. Testimony suggests that this cost estimate is on the high side, since many handlers already have USDA personnel in their plants to perform other grading services besides certification of lots for minimum quality.

The cost of aflatoxin testing in the witnesses' simulation analysis is estimated at the current rate charged by a private laboratory ($75 per test). Given this rate information, the aflatoxin testing cost per pound would be $0.0019

($75 divided by the average lot size of 40,000 pounds).

For the largest handlers, the combined cost of aflatoxin testing and paying for the USDA presence in the plants will be equal to the sum of the quality and aflatoxin cost figures outlined above ($0.0013 + $0.0019), or $0.0032 per pound. To account for imprecision of data and other incidental costs, Dr. Sumner's analysis employs a median cost per pound for marketing order compliance, which is slightly higher, or $0.005 per pound. The analysis further assumes that per unit costs are somewhat higher for smaller plants. Thus, median costs for two categories of smaller plants are estimated at $0.006 and $0.007.

Weighting these cost figures for the three different size categories of plants yields an overall median estimated cost per pound for compliance of $0.00525. In terms of economic theory, this cost increase is represented by an upward shift in the supply curve of about one-half cent, as measured along the vertical axis in a supply-demand graph. The total direct cost of compliance is estimated at $875,000 in the median scenario ($0.00525 times 166.67 million pounds in the domestic market).

Benefit Estimates

The witness's economic analysis takes into account three separate demand benefits, which he considers distinct. The first, and largest, of the demand benefits is higher expected long run average demand due to the reduced chance of an aflatoxin event that would cause a major negative shock to demand. The mandatory aflatoxin testing under the marketing order will reduce the chance of a demand-decreasing market disturbance in the U.S.

Witnesses cited a 1996 pistachio aflatoxin case that occurred in Germany as an example of what could befall the U.S. pistachio industry if aflatoxin were not properly regulated. Widespread negative publicity about aflatoxin in foreign pistachios exported to Germany caused sales revenue to decline by 50 percent for a duration of three years or more. Witnesses estimate that a similar event in the United States could cost the industry over $300 million in gross revenue. Witnesses also pointed out that there were significant additional repercussions on pistachio sales worldwide as word of the German aflatoxin incident spread through the media of other nations, especially in Europe, affecting pistachio sales in those countries.

The witness's analysis assumes that an aflatoxin related market disturbance would cause a more moderate decrease, represented in the median simulation case as a 10 percent decline (18 cents) from the $1.80 per pound typical base price at the handler level.

By requiring aflatoxin testing for all pistachios destined for the domestic market, the marketing order will make the probability of an aflatoxin event less likely. As a starting point, witnesses argued that without mandatory aflatoxin testing through the marketing order, there is a 5-percent annual probability of an aflatoxin related market disturbance. If such an incident were to occur, witnesses estimated that its impact would last for 3 years. Implementation of mandatory testing is then assumed to reduce the probability to 1 percent, a decline of 4 percentage points.

Mandatory testing under the marketing order therefore increases expected demand, or willingness to pay for pistachios, by $0.0216 per pound (4 per cent decline in probability times 18 cents times 3 years).

The witness's analysis includes two additional demand-side benefits. The witness asserts that USDA requirements convey a positive benefit in the market as reflected by the use of this claim in product promotion, labels, and displays. A median increase of $0.0025 in willingness to pay reflects a reasonably conservative estimate of the higher buyer confidence in pistachios due solely to USDA participation in the pistachio quality testing and certification process. The certification gives additional confidence in the quality of the product.

The third demand benefit is higher buyer perception of quality due to minimum standards. Witnesses assume a similarly small magnitude for this estimated increase in willingness to pay ($0.003 per pound).

Summing the median parameters for each of these three demand impacts, the increase in willingness to pay for pistachios supplied to the domestic market is a little under 3 cents per pound ($0.0271). In terms of economic theory, this figure represents an upward shift in the demand curve of nearly 3 cents, as measured along the vertical axis in a supply-demand graph. Most of the impact is from the first benefit, the reduced probability of aflatoxin being found in California pistachios.

Thus the median benefit in terms of increased per unit demand (willingness to pay) is estimated to be substantially larger than the estimated median per unit direct cost of marketing order compliance ($0.0271 versus $0.00525). Expected or average demand is higher, reflecting the lower probability of an aflatoxin event and the average quality and certification effects in the domestic market. Handlers will face higher costs to comply with the requirements.

Simulation Results

These figures for increased cost and increased willingness to pay were combined with different demand and supply elasticities in the simulation model developed by Dr. Sumner to assess the net economic impact of marketing order implementation. The median elasticities used were unitary (−1.0 for demand and 1.0 for supply). The supply response that is modeled is a long run supply response (additional planting) due to the permanent change in market conditions resulting from the marketing order. These assumed elasticities are based on other prior econometric estimates for pistachios and other tree nuts. Witnesses cited a 1999 report by Lucinda Lewis of Competition Economics, Inc., "Charting a Direction for the U.S. Pistachio Industry," which found a −1.14 demand elasticity for pistachios. According to the record testimony, the range of elasticities used in the simulation scenarios are consistent with published economic studies of supply and demand for pistachios and other tree nuts.

The simulation model solves a system of supply and demand equations for a new set of industry prices and quantities from marketing order implementation. As stated above, the total direct cost of compliance is $875,000. In the simulation, there is an upward shift in the market supply curve, representing increased costs to firms in the pistachio market. The magnitude of the price and quantity change from the shift in the supply curve is determined by the higher cost of production (compliance cost) and the elasticity of supply. The resulting computed (simulated) loss to the handler segment of the industry from higher expenses for marketing order compliance is $490,000.

This $490,000 differs from the previously stated $875,000 cost of compliance figure by the amount of an implied price increase and the small equalization effect on the smaller handlers that process 20 percent of the product.

The witness's analysis assumes that with minimum quality requirements the relative position of the smaller firms will improve to match those of other handlers. This is because prior to the new mandatory requirements, these firms are assumed to have fewer quality controls than most other firms, and thus end up selling nuts to the part of the

market that buys lower quality nuts at lower prices. The equalization effect resulting from uniform minimum quality specifications is a small positive benefit that offsets some of the cost of compliance for the smaller firms.

On the demand side, the higher willingness to pay is $0.0216 per pound for the reduced probability of aflatoxin in California pistachios, and $0.0055 for the two additional demand-side benefits (higher buyer confidence from USDA certification and higher buyer perception of quality). The magnitude of the price and quantity change from the shift in the demand curve is determined by the higher willingness to pay and the elasticity of demand.

In the median simulation, the amount sold in the domestic market rises by 1.6 million pounds. The benefit to industry participants is the total value of this increase in domestic sales which is the 1.6 million pound increase in quantity sold multiplied by the higher expected price level resulting from the shifting of the supply and demand curves in the simulation of marketing order impacts.

Using the median supply and demand elasticities in the simulation model, and the median compliance cost and willingness to pay figures, the computed benefit to the handler portion of the market from the reduced chance of an aflatoxin market disturbance is $1.545 million dollars. The value of the two additional demand-side benefits is $.392 million dollars. The total benefit to handlers is thus $1.938 million dollars.

When the loss due to compliance-related expenses ($490,000) is factored in, the resulting net benefit to pistachio handlers from the marketing order is $1.448 million dollars. This $1.448 million dollar estimate of net benefit to handlers is the key result from the witness's cost-benefit analysis.

In economic theory terminology, this part of the simulation is measuring the change in producer surplus. Viewed in terms of a supply-demand graph, producer surplus is the area below the price and above the supply curve. The $1.448 million dollar estimate of net benefit is a measure of the difference between producer surplus at the initial equilibrium (*e.g.*, $1.80 average price at the handler level, or $1.10 at the grower level) and the new higher price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

TABLE 1.—SIMULATION OF PISTACHIO MARKETING ORDER IMPACTS ON PRODUCERS/HANDLERS

[Annual net costs and benefits with median parameter values]

Benefit 1:	
Reduced chance of aflatoxin event	$1,545,000
Benefit 2:	
USDA certification	178,000
Benefit 3:	
Improved quality perception	214,000
Total benefit	1,938,000
Impact of cost of compliance	−490,000
Net Total	1,448,000

It should be noted that although the witness asserts that Benefit 2 and Benefit 3 are conceptually distinct, one could argue that there is significant overlap between the value of USDA certification and improved quality perception on the part of pistachio buyers and consumers. However, the assumed benefits are small in both cases, and if either of the benefit figures is eliminated, net estimated benefits to handlers still exceed one million dollars.

Cost-benefit studies which use economic welfare analysis also typically include consumer impacts, and the witness's economic analysis includes a parallel set of computations for the buyer/consumer segment of the pistachio industry. The largest demand-side benefit, the reduced chance of an aflatoxin event, is estimated at $2.586 million. The combined value of the two additional demand-side benefits is $.655 million, yielding a total benefit estimate of $3.241 million. Subtracting the estimated impact on buyers/consumers of introducing added costs of marketing order compliance ($245,000) yields a buyer/consumer net benefit estimate of $2.996 million. A key aspect of this economic analysis is that consumer willingness to pay for pistachios rises as consumer confidence improves from the higher quality standards imposed by the order. With the demand and supply elasticities used in the analysis, the benefits to the domestic buyers/consumers in this simulation are larger than benefits to the handler side of the market.

In economic theory terminology, this part of the simulation is measuring the change in consumer surplus. Viewed in terms of a supply-demand graph, consumer surplus is the area above the price and below the demand curve. The $2.996 million dollar estimate of net benefit is a measure of the difference between consumer surplus at the initial equilibrium and the new price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

Summing the producer/handler and buyer/consumer net benefits ($2.996 + $1.448) yields a $4.444 million median estimated value of the marketing order to the economy.

Estimated Impacts on Small Producers

The marketing order does not impose any direct compliance costs on producers. The direct impact is on the handlers who are required to pay for testing and inspection. Producers will be affected to the extent that they may have to discard more low quality nuts than previously, if they produce quantities of nuts below the size and quality standard. Witnesses stated there is no evidence that the proportion of low quality nuts is correlated with farm size.

Additionally, the record shows that handler costs of compliance are typically reflected in handler payments to producers. Witnesses stated that the anticipated benefit derived from increased consumer demand will offset the cost of compliance to producers.

Witnesses stated that most producers sell to large handlers (which handle 80 percent of production). Distinguishing among handlers by size does not indicate different economic impacts on individual farms, which are distributed broadly across handlers.

Witnesses also pointed out that there is substantial inter-handler competition in the pistachio industry, with at least 10 handlers out of 19 competing for producers' pistachios (with the remainder presumably processing for their own account). Given the distribution of producers across processing firms and the level of competition, the overall cost-benefit results may be taken as the impact on the full size range of producers.

Based on a farm price of $1.10 and a handler price of $1.80, producers receive about 60 percent of the revenue in the industry, and are likely (given certain supply elasticities) to receive more than 60 percent of the estimated handler net benefits. Producer total gain (out of the estimated $1.448 million in net benefits to the handler segment) is thus at least $870,000 per year ($1.448 million times 0.60). This is distributed across producers in proportion to output, with no differential impact on smaller or larger producers.

Based on the hearing record, AMS therefore concludes that pistachio producers will benefit from implementation of the order. Further,

there is no evidence of differing economic impacts between small and large producers.

Estimated Impact on Small Handlers

Most compliance costs are uniform across handlers, but some differences could be correlated with the size of a handler's operation. Two relevant points are the number of lots ready to be tested per day and the lot size to be tested. Larger firms, which are more likely to have larger lot sizes for testing and to have more lots ready per day (up to about 5), may experience some savings relative to firms with smaller lot sizes and fewer lots to be tested at one time.

The marketing order includes provisions to reduce compliance costs for small handlers. Firms that handle less than 1,000,000 pounds per year will be subject to simplified aflatoxin testing procedures. Additionally, they will be exempt from testing for remaining minimum quality requirements. This should reduce the expenses for smaller handlers.

Some other handlers, which process substantially more, may face somewhat higher costs for at least part of their production. Those handlers are likely, however, to have more than $5 million in total revenue, and would thus not be classified as small business entities.

Table 2 shows that the compliance costs and net economic impacts for different sizes of handlers. A positive net economic impact would exist for all handler groups.

TABLE 2.—DISTRIBUTION OF ECONOMIC EFFECTS ACROSS HANDLERS OF DIFFERENT SIZES

[Pistachio marketing order simulation results with median parameter values]

Handler group*	Direct compliance cost (dollars)	Net economic impact (dollars)
Higher Volume/Lower Compliance Costs	−$667,000	1,178,000
Medium Volume/Compliance Costs	−150,000	208,000
Lower Volume/Higher Compliance Costs	−58,000	61,000
Total	−875,000	1,447,000

*80%, 15%, and 5%, respectively, of total quantity of pistachios marketed annually.

The above table shows that the net economic impact is in direct proportion to the volume of pistachios handled by each handler group. For example, the largest handler group, accounting for 80 percent of the pistachios marketed, will reap about 81 percent of the benefits of the program. AMS therefore concludes that the program will not have a disproportionate impact on small entities.

The cost and benefit estimates presented above focus on a single set of results using median parameter values. The witness's economic analysis involved simulating a number of scenarios, using alternative values for compliance costs, benefits, and elasticities of supply and demand. All scenarios, even the low benefit, high cost scenarios, indicated positive net economic impacts.

The witness's analysis concludes that the marketing order will require minimal adjustments in current processing activities and will yield large estimated benefits. The simulation results indicate that costs of compliance are small relative to benefits for all firms, and that both small and large entities are likely to benefit significantly. Producers are likely to share net producer benefits in proportion to production. Large and small handlers both gain from the marketing order, also in proportion to the volumes handled. Some of the smallest handlers could have larger net benefits per unit because of the provision allowing special lower-cost testing arrangements.

The witness's net benefit analysis represents a reasonable, plausible set of estimates of the economic impact of mandatory aflatoxin testing and minimum quality standards through a Federal marketing order. The median cost and benefit figures explained during the hearing are considered to adequately represent estimates of the economic impact of implementation of the program and its regulatory provisions.

The order will impose some reporting and recordkeeping requirements on handlers. However, handler testimony indicated that the expected burden that will be imposed with respect to these requirements will be negligible. Most of the information that will be reported to the committee is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under the peanut aflatoxin certification program (7 CFR part 996) impose an average annual burden on each regulated handler and importer of about 8 hours. It is reasonable to expect that a similar burden will be imposed under this marketing order on the estimated 19 handlers of pistachios in California.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order, namely no marketing order, or an order without the combination of quality, size and aflatoxin regulation.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In determining that the order and its provisions will not have a disproportionate economic on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the order will impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for California pistachios. Therefore, any additional costs should be offset by the benefits derived from expanded sales benefiting handlers and producers alike. Accordingly, it is determined that the order will not have a disproportionate economic impact on a substantial number of small handlers or producers.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the forms to be used for nomination and selection of the initial administrative committee have been submitted to and approved by OMB.

Any additional information collection and recordkeeping requirements that

may be imposed under the order will be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Civil Justice Reform

The provisions of the marketing agreement and order have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. The agreement and order will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of pistachios grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of pistachios in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in California as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make most of the provisions of this order effective not later than one day after publication in the **Federal Register.** The exception would be for those provisions of the order (§§ 983.38 through 983.46) that establish mandatory testing inspection and certification for maximum aflatoxin and minimum quality levels of California pistachios. These provisions would not become effective until August 1, 2004.

A later effective date would unnecessarily delay implementation of the program, which is expected to benefit the California pistachio industry. Making the program effective as specified would allow for the nomination, selection and organization of the initial administrative committee sufficiently in advance of the 2004 pistachio harvest season. It also allows time for the committee to recommend a budget and assessment rate and any administrative rules and regulations deemed necessary to operate the program.

In view of the foregoing, it is hereby found and determined that good cause exists for making most of the order provisions effective one day after publication in the **Federal Register,** and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement Regulating the Handling of Pistachios Grown in California," upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping pistachios covered by the order) who during the period September 1, 2002, through August 31, 2003, handled not less than 50 percent of the volume of such pistachios covered by the order, and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period September 1, 2002, through August 31, 2003 (which has been determined to be a representative period), have been engaged within the production area in the production of pistachios for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in Proposed 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Order Relative to the Handling of Pistachios Grown in California

It is therefore ordered, That on and after the effective date hereof, all handling of pistachios grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the marketing order are set forth in full herein.

■ Title 7, chapter IX is amended by adding part 983 to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

Definitions

Sec.

Authority: 7 U.S.C. 601–674.

Definitions

§ 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

§ 983.2 Act.

Act means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 983.3 Affiliation.

Affiliation. This term normally appears as "affiliate of", or "affiliated with", and means a person such as a producer or handler who is: A producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term "control" (including the terms "controlling", "controlled by", and "under the common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 983.4 Aflatoxin.

Aflatoxin is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

§ 983.5 Aflatoxin inspection certificate.

Aflatoxin inspection certificate is a certificate issued by an accredited laboratory or by a USDA laboratory.

§ 983.6 Assessed weight.

Assessed weight means pounds of inshell pistachios, free of internal defects as defined in § 983.39(b)(4) and (5), with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

§ 983.7 Certified pistachios.

Certified pistachios are those for which aflatoxin inspection and minimum quality certificates have been issued.

§ 983.8 Committee.

Committee means the administrative committee for pistachios established pursuant to § 983.32.

§ 983.9 Confidential data or information.

Confidential data or information submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 983.10 Department or USDA.

Department or USDA means the United States Department of Agriculture.

§ 983.11 Districts.

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by the committee to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

§ 983.12 Domestic shipments.

Domestic shipments means shipments to the fifty states of the United States or to territories of the United States and the District of Columbia.

§ 983.14 Handle.

Handle means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios;

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce; and/or

(d) Placing pistachios into the current of commerce from within the production area to points outside thereof: *Provided,* however, that transportation within the production area between handlers and from the

orchard to the processing facility is not handling.

§ 983.15 Handler.

Handler means any person who handles pistachios.

§ 983.16 Inshell pistachios.

Inshell pistachios means pistachios that have a shell that has not been removed.

§ 983.17 Inspector.

Inspector means any inspector authorized by the USDA to inspect pistachios.

§ 983.18 Lot.

Lot means any quantity of pistachios that is submitted for testing purposes under this part.

§ 983.19 Minimum quality requirements.

Minimum quality requirements are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

§ 983.20 Minimum quality certificate.

Minimum quality certificate is a certificate issued by the USDA or Federal/State Inspection Service.

§ 983.21 Part and subpart.

Part means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued there under. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

§ 983.22 Person.

Person means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

§ 983.23 Pistachios.

Pistachios means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

§ 983.24 Processing.

Processing means hulling and drying pistachios in preparation for market.

§ 983.25 Producer.

Producer means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

§ 983.26 Production area.

Production area means the State of California.

§ 983.27 Production year.

Production year is synonymous with "fiscal period" and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary. Pistachios harvested and received in August of any year shall be applied to the subsequent production year for marketing order purposes.

§ 983.28 Proprietary capacity.

Proprietary capacity means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 983.29 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

§ 983.30 Shelled pistachios.

Shelled pistachios means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

§ 983.31 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

Administrative Committee

§ 983.32 Establishment and membership.

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers.* Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton (or portion thereof) of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers.* Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3. The Secretary, upon recommendation of the committee, may reapportion producer membership among the districts to ensure proper representation.

(c) *Public member.* One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

§ 983.33 Initial members and nomination of successor members.

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) *Initial members.* Nominations for initial grower and handler members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) *Successor members.* Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer or handler members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided,* That:

(1) Any qualified individuals who seek nomination as a producer member shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all producers who are on record with the committee within the respective districts; the person(s) receiving the highest number of votes shall be the member nominee(s) for that district, and the person(s) receiving the second highest number of votes shall be the alternate member nominee(s). In case of a tie vote, the nominee shall be selected by a drawing.

(2) Any qualified individuals who seek nomination as a handler member shall submit to the committee an intent to seek office with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting

instructions, shall be mailed to all handlers who are on record with the committee. For the first handler member seat, the person receiving the highest number of votes shall be the handler member nominee for that seat, and the person receiving the second highest number of votes shall be the alternate member nominee. For the second handler member seat, the person receiving the highest number of votes representing handler volume shall be the handler member nominee for that seat, and the person receiving the second highest number of votes representing handler volume shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) *Handlers.* Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) *Producers.* Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) *Member's affiliation.* Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) *Cooperative affiliation.* In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) *Alternate members.* Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) *Selection by Secretary.* Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten producer and handler members of the committee and an alternate for each member.

(i) *Acceptance.* Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) *Term of office.* Selected members and alternate members of the committee shall serve for terms of two years: *Provided*, That four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the committee. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) *Qualifications.* (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer or employee of a handler.

(3) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee to

qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

(n) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.32, 983.33 and 983.34.

§ 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided*, That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(1) Minimum quality levels;

(2) Aflatoxin levels;

(3) Inspection programs;

(4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided*, That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further*, That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

§ 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rate of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

Marketing Policy

§ 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

Regulations

§ 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing ("lot samples") in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (d)(2)("test samples"). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2 of this paragraph.

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
221–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest) or other methods as recommended by not less than seven members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots "negative" as to aflatoxin.* Lots will be certified as "negative" on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 10 ppb. If the averaged aflatoxin level of the Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the averaged aflatoxin level of Test Sample #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3 and the results of Test Samples #1, #2 and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, re-work the lot, and re-submit it for testing after a re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection

certificate if the averaged results of Test Samples #1, #2 and #3 is at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2 and #3 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the crop year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

§ 983.39 Minimum quality levels.

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3 of this paragraph.

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
1. Non-splits & not split on suture	10.0	
(i) Maximum non-splits allowed	4.0	
2. Adhering hull material	2.0	
3. Dark stain	3.0	
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot	10.0	
INTERNAL (KERNEL) DEFECTS		
1. Damage	6.0	3.0
Immature kernel (Fills <75%–>50% of the shell)		
Kernel spotting (Affects ⅛ aggregate surface)		
2. Serious damage	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay		
(i) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	
OTHER DEFECTS		
1. Shell pieces and blanks (Fills <50% of the shell)	2.0	
(i) Maximum blanks allowed	1.0	
2. Foreign material—No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	
4. Loose kernels	6.0	
	Minimum permissible defects (percent by weight)	
Maximum allowable inshell pistachios that will pass through a $^{30}/_{64}$ths inch round hole screen	5.0	

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) *Loose kernels* means kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) *External (shell) defects* means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an $^{18}/_{1000}$ (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth (⅛) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration

that affects more than one-eighth of the total shell surface. Pistachios that are dyed or color-coated to improve their marketing quality are not subject to the maximum permissible defects for dark stain. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. "Immature kernels" in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* that is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means 1/16th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through 5/64 inch round opening.

(v) *Undersized* means inshell pistachios that fall through a 30/64-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in Table 4 of this paragraph (e)(1). These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for internal kernel analysis. The USDA protocol currently appears in USDA inspection instruction manual "Pistachios in the Shell, Shipping Point and Market Inspection Instructions," June 1994: revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at *http://www.ams.usda.gov/fv/fvstand.htm.*

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years following the production year in which the pistachios were shipped, and

are subject to audit by the committee at any time.

§ 983.40 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

§ 983.41 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in § 983.38.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exemption from minimum quality testing. If the committee grants an exemption, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

§ 983.42 Commingling.

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

§ 983.43 Reinspection.

The Secretary, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

§ 983.44 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler.

§ 983.45 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by §§ 983.38 and 983.39 shall not be shipped for domestic human consumption.

§ 983.46 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that the order provisions contained in §§ 983.38 through 983.45 should be modified or suspended, it shall by vote of at least seven concurring members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality provisions in §§ 983.38 and 983.39 should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.38 through 983.45.

Reports, Books and Records

§ 983.47 Reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

§ 983.48 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

§ 983.49 Records.

Records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part will be maintained by each handler for at least three years beyond the crop year of their applicability.

§ 983.50 Random verification audits.

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

§ 983.51 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or which may have been shipped by him/her.

Expenses and Assessments

§ 983.52 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

§ 983.53 Assessments.

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the *pro rata* share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

§ 983.54 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

§ 983.55 Delinquent assessments.

Any handler who fails to pay any assessment within the time required by the committee, shall pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. The late payment and interest charges may be modified by the Secretary upon recommendation of the committee.

§ 983.56 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided*, That any sum paid by a person in excess of his/her *pro rata* share of the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned *pro rata* to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

§ 983.57 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying §§ 983.47 through 983.56, inclusive.

Miscellaneous Provisions

§ 983.58 Compliance.

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

§ 983.59 Right of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 983.60 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 983.61 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 983.62 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 983.63 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 983.64 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

§ 983.65 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

§ 983.66 Suspension or termination.

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the Act.

§ 983.67 Termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (2/3) majority of voting producers, or a two thirds (2/3) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

§ 983.68 Procedure upon termination.

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 983.69 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued there under,

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 983.70 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and 983.53 if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

§ 983.71 Relationship with the California Pistachio Commission.

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

Dated: March 25, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–7414 Filed 4–2–04; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Monday,
April 5, 2004

Part V

Securities and Exchange Commission

17 CFR Parts 232, 240, and 249
Proposed Rule Changes of Self-Regulatory Organizations; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34–49505; File No. S7–18–04]

RIN 3235–AJ20

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing to amend certain requirements relating to rule changes proposed by self-regulatory organizations ("SROs"). Specifically, SRO proposed rule changes would be required to be filed electronically with the Commission, rather than in paper form. In addition, the Commission is proposing to require SROs to post all proposed rule changes, as well as current and complete sets of their rules, on their websites. The Commission is also proposing to make certain technical amendments to the requirements for SRO rule changes under the Securities Exchange Act of 1934 ("Act"). Together, the proposed amendments are designed to modernize the SRO rule filing process by making it more efficient and cost effective. The proposed amendments also should improve the transparency of the rule filing process and assure that all SRO members and other interested persons have ready access to an accurate, up-to-date version of SRO rules.

DATES: Comments should be submitted on or before June 4, 2004.

ADDRESSES: Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC website (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov*. Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. All submissions should refer to file number S7–18–04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Florence Harmon, Senior Special Counsel, at (202) 942–0773; Elizabeth Badawy, Accountant, at (202) 942–0740; Joseph Morra, Special Counsel, at (202) 942–0781; Sonia Trocchio, Special Counsel, at (202) 942–0753; Cyndi N. Rodriguez, Special Counsel, at (202) 942–4163; Michael L. Milone, Special Counsel, at (202) 942–0179 (clearance and settlement SROs), Timothy Fox, Attorney, at (202) 942–0146, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under Section 19(b) of the Act, SROs generally must file proposed rule changes with the Commission for notice, public comment, and Commission approval, prior to implementation.[1] This requirement helps assure, through Commission review and the public comment process, that SROs' rules are consistent with the purposes of the Act.

The Commission is proposing changes to the rule filing process that should make it more efficient and transparent and reduce costs for the SROs and the public. First, the Commission would require SROs to file their proposed rule changes with the Commission electronically, rather than in paper format. By amending Rule 19b–4 and Form 19b–4 to require electronic filing, the rule filing process would be initiated more quickly and economically, to the benefit of both the Commission and the SROs, as well as SRO members, investors, and other interested persons. In addition, the proposed amendments should permit the Commission to monitor and process proposed SRO rule changes more efficiently and effectively. Second, the Commission would mandate that SROs promptly post on their websites a copy of all proposed rule changes filed with the Commission. Website posting of SRO proposed rule changes should facilitate the ability of interested persons to comment on the proposals and save resources currently used to monitor the Commission's Public Reference Room for proposed rule changes. The Commission is also proposing that SROs maintain a current and complete version of their rules on their websites. Current practices in this area vary considerably among SROs, often resulting in confusion by SRO members, others seeking to comply with SRO rules, and other interested parties. Finally, the Commission is proposing to make certain technical amendments to clarify Rule 19b–4 and to reflect practice.

II. Background

Section 19(b)(1) of the Act[2] requires each SRO to file with the Commission its proposed rule changes,[3] accompanied by a concise general statement of the basis for, and purpose of, the proposed rule change.[4] Once an SRO files a proposed rule change, the Commission must publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless the Commission approves it, or it is otherwise permitted to become effective under Section 19(b)(3)(A) or Section 19(b)(7) of the Act.[5]

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[1] 15 U.S.C. 78s(b). Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board ("MSRB"). Currently, there are 27 SROs that file proposed rule changes with the Commission. Section 107 of the Sarbanes-Oxley Act of 2002 provides that the Public Company Accounting Oversight Board ("PCAOB") shall file proposed rule changes with the Commission "as if the Board were a registered securities association for purposes of that section 19(b) * * *." 15 U.S.C. 7217(b)(4). Because PCAOB rule filings are not tracked by the SRO Rule Tracking System ("SRTS"), the Division of Market Regulation's ("Division") internal tracking database for rule filings, the Commission is not requiring, at this time, the PCAOB to file electronically its proposed rules. Further, as the proposal for web posting of proposed and final SRO rules is designed to make the SRO rule filings in the SRTS accessible to the public in a uniform manner, the Commission does not intend for these proposed amendments to apply to the PCAOB.

[2] 15 U.S.C. 78s(b)(1).

[3] Section 19(b)(1) of the Act requires each SRO to file with the Commission "any proposed rule or any proposed change in, addition to, or deletion from the rules of * * * [a] self-regulatory organization." *See* 15 U.S.C. 78s(b)(1).

[4] Many proposed rule changes are filed pursuant to Section 19(b)(1) of the Act for a 21-day notice and comment period. 15 U.S.C. 78s(b)(1). The Act requires the Commission, within 35 days of publication, to either issue an order approving a proposed rule change or to institute a proceeding to determine whether a proposed rule change should be disapproved. The Commission may extend this 35-day period up to 90 days if it publishes its findings for doing so. The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice in the **Federal Register** if the Commission finds good cause for doing so and publishes its reasons. 15 U.S.C. 78s(b)(2).

Section 19(b)(3)(A) of the Act and Section 19(b)(7) of the Act provide that, in certain circumstances, a proposed rule change may become effective without the approval procedures specified in Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(7); 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(7).

The SRO rule filing process under the Act serves several important policy goals. First, the notice and comment requirement helps assure that interested persons have an opportunity to provide input into SRO actions that could have a significant impact on the market, market participants—both professionals and individual investors—and others.[6] Second, the rule filing process allows the Commission to review proposed rule changes to determine whether they are consistent with the Act, including the national market system goals of fair competition, price transparency, best execution, and investor protection. Finally, the rule filing process helps assure that SRO members, among others, are treated fairly in accordance with the Act, such that there is fair representation of members in the selection of the SRO's directors and the administration of its affairs, the equitable allocation of reasonable dues, fees, and other charges, and the appropriate and fair discipline of members.

III. Proposed Amendments

A. Electronic Filing

The Commission proposes to modernize the rule filing process by requiring SROs to file proposed rule changes electronically with the Commission through a web-based system.[7] To implement electronic web-based filing of proposed SRO rule changes, the Commission would amend Rule 19b–4 and Form 19b–4 to require that all Forms 19b–4, and any amendments thereto, be submitted electronically to the Commission in accordance with the procedures, and in the format, specified therein. Each SRO would have access to a secure website that would enable authorized individuals at the SRO to file with the Commission an electronic Form 19b–4 on behalf of the SRO.[8] The current requirement in Form 19b–4 that SROs submit multiple, paper copies of proposed rule changes would be eliminated. Under the proposed amendments, a proposed rule change would be deemed filed with the Commission on the business day that it is submitted electronically, so long as the Commission receives it on or before 5:30 p.m., Eastern Standard Time or Eastern Daylight Savings Time, and it is filed in accordance with the requirements of Rule 19b–4 and Form 19b–4, as amended.

Occasionally, an SRO may find it necessary to file documents that cannot be submitted in electronic format, such as pre-filing comment letters from SRO members or other exhibits. In addition, it may not be appropriate to require proprietary and other information subject to a request for confidential treatment to be filed electronically.[9] Accordingly, the proposed amendments to Rule 19b–4 and Form 19b–4 retain the flexibility to permit portions of a rule filing to be made in paper form under limited circumstances.

As to signature requirements, Form 19b–4 currently requires that a "duly authorized officer" of an SRO manually sign all rule filings.[10] The Commission proposes to amend Form 19b–4 so that SROs would be required to file their proposed rule changes with an electronic signature.[11] Furthermore, each duly authorized signatory would be required to obtain a "digital ID" in order to provide both the Commission and the SRO with assurances that the Form 19b–4 has been transmitted without external interference.[12] As with the EDGAR system, any required signatures with respect to an SRO proposed rule change would appear in typed form.[13] In addition, each signatory would be required to manually sign the Form 19b–4, authenticating, acknowledging, or otherwise adopting his or her electronic signature that is attached to or logically associated with the filing.[14] In accordance with Rule 17a–1 of the Act,[15] the SRO would be required to retain that manual signature page of the rule filing, authenticating the signatory's electronic signature, for not less than five years after the Form 19b–4 is filed with the Commission[16] and, upon request, furnish a copy of it to the Commission or its staff.[17]

In recent years, the Commission has been processing increasing volumes of SRO rule proposals, as both the number of SROs and SRO facilities,[18] and their rulemaking activity, has increased.[19] The Commission believes that requiring SROs to file proposed rule changes electronically would have several benefits.

First, electronic filing of proposed rule changes should speed the initiation of the rule filing process. In today's highly competitive market environment, SROs are under pressure to complete the rule filing process quickly.[20] Under

[6] For example, SROs exercise certain quasi-governmental powers over members through their ability to impose disciplinary sanctions, deny membership, and require members to cease doing business entirely or in specified ways.

[7] The Commission previously proposed electronic filing of SRO proposed rule changes in the Rule 19b–6 proposal. *See* Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 5, 2001). The Commission has not taken action on this proposal.

[8] The SRO would determine which individuals would be supplied with User IDs and passwords to access the secure website. *See infra* Note 13.

[9] In a similar context, Section 232.202(c) of Regulation S–T governing EDGAR filers permits paper filing of confidential treatment requests and the information with respect to which confidential treatment is requested. SROs sometimes submit confidential surveillance procedures or proprietary data to the Commission in connection with proposed rule changes, which may not be electronically accessible, and, in any event, is segregated from the public file pursuant to a Freedom of Information Act ("FOIA") exemption request.

[10] The signature requirement of Form 19b–4 states that "pursuant to the requirements of the Act, the [SRO] has caused the filing to be signed on its behalf by the undersigned thereunto duly authorized."

[11] The Commission notes that the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.* does not apply in this regard.

[12] A digital ID, sometimes called a "digital certificate," is a file on the computer that identifies the user. Computers can use a digital ID to create a digital signature that verifies both that the message originated from a specific person and that the message has not been altered either intentionally or accidentally. The user obtains a digital ID from a "Certificate Authority" ("CA") for a modest sum (currently approximately $15 per year). When the SRO electronically sends the Form 19b–4 to the Commission, the digital ID will encrypt the data through a system that uses "key pairs." With key pairs, the SRO's software application uses one key to encrypt the document. When the Commission receives the SRO's electronic document, the Commission's software will use a matching key to decrypt the document.

[13] *See* Rule 301 of Regulation S–T. 17 CFR 232.301. The Commission proposes defining "electronic signature" as an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. This definition is the same as the definition that governs EDGAR filings in Rule 302 of Regulation S–T, 17 CFR 232.302.

[14] *See* Rule 302(b) of Regulation S–T, which requires similar authentication, acknowledgement, or otherwise adoption of his or her signature that appears in typed form within the electronic filing. 17 CFR 232.302(b).

[15] 17 CFR 240.17a–1.

[16] *Id.*

[17] *See* Proposed Rule 19b–4(j). These requirements were adapted from Section 232.302 of Regulation S–T, 17 CFR 232.302 for EDGAR filers.

[18] For instance, in February 2000, the Commission approved the registration of the International Securities Exchange, Inc., and in October 2001, the Commission approved a proposed Pacific Exchange, Inc. ("PCX") rule change to create a facility of PCX, the Archipelago Exchange, LLC. In addition, in January 2004, the Boston Stock Exchange, Inc. ("BSE") created the Boston Options Exchange, LLC ("BOX") as a new electronic options facility of the BSE. Division staff also must quickly review effective-upon-filing rule changes from new notice-registered exchanges, such as One Chicago, LLC and NQLX, LLC.

[19] The Division has processed approximately 28% more rule filings since fiscal year 2001 and has processed approximately 60% more rule filings since fiscal year 1999.

[20] For example, SROs that operate securities markets are facing increased competition from electronic communication networks ("ECNs"), which as registered broker-dealers are not subject to the rule filing requirements that are imposed on SROs, and foreign markets, which may be subject

Continued

the current system, SROs send paper copies of proposed rule changes to the Commission via messenger, overnight delivery, or U.S. mail. Once the Commission receives a proposed rule change, internal processing of paper filings may take several days before the rule filing is received by the staff person assigned to review it. Electronic filing would substantially reduce the time it takes to process SRO rule filings by eliminating paper delivery, copying and distribution.

Second, electronic rule filing should reduce costs for the SROs [21] and should also result in a more efficient use of Commission resources. The SROs no longer would incur delivery costs for paper filings or the SRO staff time currently devoted to preparing filing packages. The Commission also would benefit from reducing the personnel time currently associated with manually processing paper filings.

Finally, by integrating the electronic filing technology with SRTS, Commission staff could more easily monitor and process proposed SRO rule changes. Pertinent information regarding proposed rule changes, as well as amendments, would be captured automatically by SRTS.[22] As a result, the Commission would be able to monitor electronically the progress of SRO rule filings from initial receipt through final disposition, and thereby enhance its management of the rule filing process.

B. Posting of Proposed Rule Changes on SRO Websites

The Commission also is proposing to amend Rule 19b–4 to require each SRO to post all proposed rule changes, and any amendments thereto, on its public website no later than the next business day after filing with the Commission. The Commission has chosen the next business day to provide interested persons with quick access to the proposed rule change, while at the same time providing SROs with sufficient time to comply with this posting requirement. A copy of the complete proposed rule change would continue to be available in the Commission's Public Reference Room, but in electronic and paper format. The Commission believes that website accessibility of proposed SRO rule changes would facilitate the ability of interested persons to comment on the proposals and save SRO resources currently used to monitor the Commission's Public Reference Room for competitors' proposed rule changes. By providing ready access to proposed SRO rule changes, effective public comment should be facilitated, thus enhancing the transparency of the rule filing process.[23] Although practices vary, several SROs now post selected rule filings on their websites. Nearly all of the SROs have informally indicated to Commission staff that they favor such increased accessibility to proposed rule filings, as long as it is a uniform requirement.

C. Posting of Current and Complete Rule Text on SRO Websites

In addition, the Commission proposes to amend Rule 19b–4 to require SROs to post and maintain a current and complete version of their rules on their websites. Under the proposal, each SRO would be required to update its public website to reflect rule changes no later than the next business day after it has been notified of Commission approval of the rule change or Commission notice of an effective-upon-filing SRO rule.[24] The Commission has chosen the next business day to provide interested persons with prompt access to the SROs' rules, while at the same time providing SROs with sufficient time to comply with this posting requirement. If an approved rule change is not effective for a certain period after Commission approval, the SRO would be required to indicate clearly the implementation date in the relevant rule text. Notification to the SRO would either be done electronically through SRTS or by faxing the Commission's approval order or the Commission's notice of effective-upon-filing SRO rules to the SRO. Current practices with respect to website availability of rules vary considerably among SROs, often resulting in confusion by SRO members and others seeking to comply with SRO rules, as well as other interested persons. Members and other interested parties often need prompt and accurate notification of SRO rule changes to be able to comply with such rules. The Commission believes that this proposal should help assure that current, accurate, and complete versions of the rules of each SRO are readily accessible to interested parties, thus enhancing compliance with SRO rules.

D. Amendments to Rule 19b–4

The Commission is proposing to make two amendments to clarify Rule 19b–4 and reflect current practice. First, the Commission is proposing to amend Rule 19b–4(e), which addresses rule filing requirements applicable to "new derivative securities products," to clarify that that term does not include a single equity option or a security futures product.[25] Second, the Commission is proposing to amend Rule 19b–4(f)(2) to more clearly reflect the Commission's stated position that a proposed fee change applicable to non-members and non-participants must be filed under Section 19(b)(2) of the Act for full notice and comment, and not filed under Section 19(b)(3)(A)(ii) of the Act.[26]

E. Technical Amendments to Regulation S–T

Regulation S–T [27] currently states that all Exchange Act filings, except for Form 25,[28] must be submitted in paper. Therefore, the Commission is proposing to make a technical amendment to Regulation S–T to reflect that the Form 19b–4 will be filed electronically.

F. Form 19b–4 Amendments; Commission Policy

1. Form 19b–4 Amendments

Form 19b–4 would be amended to eliminate the required submission of nine paper copies and instead require electronic filing of Form 19b–4.[29] To access the secure Internet site for web-based filing of the Form 19b–4, the SRO

to less rigorous regulatory requirements in their home jurisdictions.

[21] *See* Section VI, *infra*.

[22] Such data would include whether the proposed rule change is filed pursuant to Section 19(b)(3)(A) or Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(3)(A); 15 U.S.C. 78s(b)(2).

[23] It can take as long as seven to ten days for the notice of the proposed rule change to appear in the **Federal Register**. All SROs have websites, and the expeditious posting of the Form 19b–4 should facilitate the public comment process. If the SRO withdrew the proposed rule change, the SRO could remove the proposed rule change from its website.

[24] Practices vary among SROs as to the extent to which they post rule text on their websites and the timeliness with which such rule text is updated. Prompt posting of SRO rule changes on a next business day basis should reduce confusion and facilitate compliance by market participants.

[25] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) ("New Product Release"). As the options markets already had listing standards for single equity options that addressed relevant regulatory concerns, the Commission did not intend for SROs to comply with Rule 19b–4(e) for single equity options. Similarly, the Commission did not intend to include traditional issuer warrants and traditional convertible securities in the definition of "new derivative securities product." *Id.* at 70956.

[26] *See* Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994). ("[A]s a matter of general policy, an SRO proposed rule change that establishes or changes a due, fee or other charge applicable to a non-member or non-participant must be filed under Section 19(b)(2) for full notice and comment." *Id.* At 66697; *see also* Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906 (November 7, 1980)(footnote 40). The terms "member" and "participant" are defined in Section 3(a)(3)(A) and Section 3(a)(24), respectively, of the Act.

[27] 17 CFR 232.101.

[28] 17 CFR 249.25.

[29] The proposed amendments to Form 19b–4 are attached as Appendix A.

would submit to the Commission an External Application User Authentication Form ("EAUF") [30] to register each individual at the SRO who will be submitting Forms 19b–4 on behalf of the SRO. Upon receipt and verification of the information in the EAUF process, the Commission would issue each such person a User ID and Password to permit access to the Commission's secure website. As Form 19b–4 will be electronic, initially the authorized user at an SRO would access a screen containing a filing template, referenced as Page 1, in which it could identify the SRO and the statutory section pursuant to which the rule filing would be submitted (*i.e.*, Section 19(b)(2), Section 19(b)(3)(A), or Section 19(b)(3)(B)).[31] Page 1 of Form 19b–4 will also require a brief description of the proposed rule change, as well as an indication whether a pilot is being proposed. The SRO would provide contact information and place the electronic signature of a duly authorized officer on this Page 1 initial screen.[32] The second screen of the electronic Form 19b–4 would provide the SRO with a means to attach the proposed rule change and related exhibits in Microsoft Word format.[33] SRO users would have electronic access to the general instructions for using the Form, as adapted for electronic filing.[34] Finally, the SRO would use the electronic Form 19b–4 to amend or withdraw a rule filing pending with the Commission or to file an extension of the statutory period in Section 19 of the Act in which the Commission is required to act on the rule filing.[35]

[30] This Commission web-based application currently exists and allows authorized external users to access select Commission systems.

[31] The authorized user also would be able to indicate if there would be a separate filing of any hard copy exhibits that are unable to be submitted electronically.

[32] As noted in Section III. A. above, a "duly authorized officer" at the SRO would be required to place his or her "electronic signature" on the Form 19b–4 before it is transmitted electronically to the Commission.

[33] Exhibits 2 and 3 may not be available in Microsoft Word and could be submitted in another acceptable electronic format or in paper.

[34] For example, the SRO would click separate boxes on the second screen to attach one Microsoft Word document containing Items I through IV of the Form 19b–4 and other documents for the different exhibits: the completed notice of the proposed rule change for publication in the **Federal Register**; copies of notices issued by the SRO soliciting comment and copies of all written comments; copies of transcripts or summaries of any public meeting; copies of any form, report, or questionnaire; marked copies of amendments; and separate rule text, if the SRO wishes to attach such rule text as an exhibit, instead of including it in Item I of the Form 19b–4.

[35] 15 U.S.C. 78s(b)(2).

In addition, the Commission notes that, generally, Form 19b–4 requires, and will continue to require, an SRO to: (1) Submit a complete description of the terms of its proposal; (2) describe the impact of the proposed rule change on various segments of the market, including members, member constituencies, and non-members; and (3) describe how the filing relates to existing rules of the SRO.[36] In addition, a proposed rule change must provide an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change, including its consistency with the Act and rules thereunder, and its impact on competition, if any, as well as a summary of any written comments received by the SRO. The proposed rule change must be consistent with the existing rules of the SRO, including any other proposed rule changes. Form 19b–4 also contains certain technical requirements so that information presented in the Form is comprehensible. Finally, as stated, the chief executive officer, general counsel, or other officer or director of the SRO that exercises similar authority must electronically sign the Form 19b–4.

2. Commission Policy: Accurate, Consistent, and Complete Forms 19b–4

The Commission firmly believes that, to provide the public with a meaningful opportunity to comment, a proposed rule change must be accurate, consistent, and complete. Form 19b–4 states that "[t]his form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The SRO must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner." [37] The Commission, however, receives many SRO proposed rule changes that are not carefully prepared in accordance with Form 19b–4.

Currently, Commission staff devotes significant time to processing proposed rule changes, reviewing them for accuracy and completeness, and preparing them for publication. The Commission encourages SRO staff to review carefully proposed rule changes to ensure, among other things, that the filings: (1) Contain a properly completed Form 19b–4; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; and (4) state that the proposal is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended. As described in the current Form 19b–4, filings that do not comply with the foregoing are deemed not filed and returned to the SRO. Consistent with the requirements of Rule 19b–4 and Form 19b–4, electronically filed proposed rule changes that do not comply with the foregoing will continue to be returned to the SRO, but in electronic format, and, consistent with current practice, will be deemed not filed with the Commission until all required information has been provided.

[36] 17 CFR 249.819.

[37] *Id.*

IV. Request for Comment

The Commission requests the views of commenters on all aspects of the proposed amendments, discussed above, to Rule 19b–4 and Form 19b–4 under the Act. In particular, the Commission requests comment on the following:

1. Are there positive or negative implications, in addition to those discussed above, of the Commission requiring SROs to file all proposed rule changes electronically?

2. Is there a need for additional exceptions to the electronic rule filing requirement for SROs? For example, should express accommodation be made for paper filings in emergency situations when web-based, electronic filing may be temporarily unavailable? If so, what specific situations should be excepted, and what accommodations should be made? Should the existing Rule and Form requirements be available for use in such a situation?

3. Is the requirement that SROs post all proposed rule changes, and any amendments, on their websites no later than the next business day after filing with the Commission appropriate? Should this time period be longer or shorter?

4. If the SRO proposed rule change is incomplete because it does not comply with the requirements of Rule 19b–4 and Form 19b–4 and deemed not properly filed and returned to the SRO, should the SRO inform the public of the status of the proposed rule change? Similarly, if the SRO withdraws a proposed rule change, should the SRO inform the public of the withdrawal? Should that information be required to be maintained on the SRO's website?

The Commission believes such requirement may be necessary to provide needed information to those monitoring the proposed rule change.

5. Is the requirement that SROs update their websites to reflect rule changes no later than the next business day after notification of Commission approval appropriate? Should this time period be longer or shorter? Is the proposed process for Commission notification to the SRO of its approval order of a SRO proposed rule or the Commission's notice of an effective-upon-filing SRO rule, through SRTS or facsimile, adequate? If an SRO rule change is not effective until a certain period after Commission approval, should the website update be delayed until the effective date?

6. Are the SRO recordkeeping requirements for the page containing the manual signature of the Form 19b–4 appropriate?

7. There are currently seven national market system plans that have been approved by the Commission. Three of these plans are also transaction reporting plans. In the equity securities market, there are four plans. The Intermarket Trading System ("ITS") Plan governs trading of exchange-listed securities by exchanges and Nasdaq market makers. The ITS Operating Committee administers the ITS Plan. The Consolidated Tape Association ("CTA") administers two plans: the Consolidated Tape Plan [38] and the Consolidated Quotation Plan. These plans address how trades in exchange-listed equity securities are reported and how quotations for these securities are made public. The OTC/UTP Plan [39] addresses how both transaction and quotation information in Nasdaq-listed securities is consolidated and disseminated.

In the options market, there are three plans. The Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan") is the transaction reporting plan for options. The Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Linkage Plan") governs inter-market trading of options. The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options ("Options Listing Procedures Plan" or "OLPP") governs the listing of standardized options. The OPRA Plan is administered by the Options Price Reporting Authority ("OPRA"), the Linkage Plan is administered by the Options Linkage Authority ("OLA"), and the OLPP is administered by The Options Clearing Corporation and the options exchanges.

Should the plan administrators for each of these plans post on their websites or on a separate plan website a current version of the plans as well as proposed amendments to these plans within the time periods proposed for SROs?

[38] The Consolidated Tape Plan is also a transaction reporting plan.

[39] The formal name of the OTC/UTP Plan is: Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis. The OTC/UTP Plans is also a transaction reporting plan.

V. Paperwork Reduction Act

Certain provisions of the proposed rule and form contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[40] The Commission has submitted the information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The Commission is proposing to submit the current collection of information titled "Rule 19b–4 Under the Securities Exchange Act of 1934" (OMB Control Nos. 3235–0045, 3235–0504). The Commission is also proposing to submit the current collection of information titled "Form 19b–4 Under the Securities Exchange Act of 1934" (OMB Control No. 3235–0045). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information

Rule 19b–4 currently requires an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b–4. Form 19b–4 currently calls for a description of: The terms of a proposed rule change; the proposed rule change's impact on various market segments; and the relationship between the proposed rule change and the SRO's existing rules. Form 19b–4 also currently calls for an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change; the proposal's impact on competition; and a summary of any written comments received by the SRO from SRO members. The proposed amendments would not change the information currently required by Rule 19b–4 or Form 19b–4; the proposed amendments would only require that such information be submitted electronically. The proposed amendments, however, would require website posting of all proposed rule changes, and any amendments thereto. In addition, the proposed amendments would require SROs to post a current and complete set of their rules on their websites. Several SROs currently post some of this information on their websites. SROs are required by Sections 6(b)(1),[41] 15A(b)(2),[42] 17A,[43] and 15B [44] of the Act to enforce compliance with their rules. Presumably, each SRO maintains a current and complete set of its rules to facilitate compliance with this requirement.

[40] 44 U.S.C. 3501 *et seq.*

B. Proposed Use of Information

The information provided via EAUF, as required by the proposed amendments to Form 19b–4, would be used by the Commission to verify the identity of the SRO individual and provide such individual access to a secure Commission website for filing of the Form 19b–4. The Commission proposes to require that SROs post their proposed rule changes on their websites so that these proposals could be viewed by the general public, SRO members, competing SROs, other market participants, and Commission staff. The information would enable interested parties to more easily access SRO rules and rule filings, which would facilitate public comment on proposed SRO rules. Additionally, SRO staff, members, industry participants, and Commission staff would utilize the accurate and current version of SRO rules that are posted on the SRO website to facilitate compliance with such rules.

C. Respondents

There are currently 27 SROs subject to the collection of information, though that number may vary owing to the consolidation of SROs or the introduction of new entities. In fiscal year 2003, these respondents filed 769 rule change proposals and 510 amendments to those proposed rule change proposals, for a total of 1279 filings that are subject to the current collection of information. Of these 769 proposed rule changes filed by SROs, 705 ultimately became effective because the SROs withdrew 64 proposed rule changes.

D. Total Annual Reporting and Recordkeeping Burden

The proposed amendments to Rule 19b–4 and Form 19b–4 are designed to

[41] 15 U.S.C. 78f(b)(1).

[42] 15 U.S.C. 78o–3(b)(2).

[43] 15 U.S.C. 78q–1.

[44] 15 U.S.C. 78o–4.

modernize the SRO rule filing process and to make the process more efficient by conserving both SRO and Commission resources. Rule 19b–4 and Form 19b–4 would be amended to require SROs to electronically file their proposed rule changes. In addition, Form 19b–4 would be revised to accommodate electronic submission. The Commission expects that an electronic form would reduce by one hour the amount of SRO clerical time required to prepare the average filing. The proposed amendments would also require SROs to post all proposed rule changes, and any amendments, on their websites, as well as maintain a current and complete set of their rules on their websites. The Commission staff estimates that it would take an SRO 30 minutes to post a filing on its website, irrespective of whether this filing is an SRO rule change proposal, amendment, or final SRO rule.

An SRO rule change proposal is generally filed with the Commission after an SRO's staff has obtained approval by its Board. The time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. However, several SROs have estimated at 35 hours the amount of time required to complete an average rule filing using present Form 19b–4. This figure includes an estimated 25 hours of in-house legal work and ten hours of clerical work. The amount of time required to prepare amendments varies because some amendments are comprehensive, while other amendments are submitted in the form of a one-page letter. The Commission staff estimates that, under current rules, four hours is the amount of time required to prepare an amendment to the rule proposal. This figure includes an estimated two hours of in-house legal work and two hours of clerical work.

With the proposed electronic filing, the Commission staff estimates that 34 hours is the amount of time that would be required to complete an average rule filing and at three hours the amount of time required to complete an average amendment. These figures reflect the one hour in savings in clerical hours that would result from the use of an electronic form for both the rule filings and the amendments.[45] The Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments would be 27,676 hours (769 rule change proposals × 34 hours + 510 amendments × 3 hours).

The Commission staff estimates that 30 minutes is the amount of time that would be required to post a proposed rule on an SRO's website and that 30 minutes is the amount of time that would be required to post an amendment on an SRO's website. The Commission staff estimates that the reporting burden for posting rule change proposals and amendments on the SRO websites would be 640 hours (769 rule change proposals[46] × 0.5 hours + 510 amendments × 0.5 hours).

The Commission staff estimates that one hour would be the amount of time required to post an SRO's current rules on its website. Currently, 22 of the 27 SROs have posted their rules on their websites; five have not.[47] The Commission staff estimates that the total reporting burden for posting current rules on the SROs' websites would be 27 hours (27 SROs × 1 hour) because each SRO should have a current version of its rules available for posting on its website.

The Commission staff estimates that two hours is the amount of time that would be required to update the SRO's website when the SRO's proposed rule becomes effective. Therefore, each time the Commission approves an SRO rule change or does not abrogate an SRO effective-upon-filing rule change (total of 705 rules in fiscal year 2003), the Commission staff estimates that the reporting burden for updating the already website posted SRO rules on the SRO website would be 1410 hours (705 SRO Commission approved or non-abrogated rules × 2 hours).

The Commission staff estimates that the total annual reporting burden under the proposed rule would be 29,753 hours (27,676 hours for filing proposed rule changes and amendments + 640 hours for posting proposed rule changes and amendments on the SROs' websites + 27 hours for initial posting of accurate SRO rule text on SRO websites + 1410 hours for updating SRO final rules on SRO websites).

The Commission does not expect that the proposed amendments with regard to electronic filing would impose any material additional costs on SROs. Instead, the Commission believes that the proposed amendments to Rule 19b–4 and Form 19b–4, on balance, would reduce paperwork costs related to the submission of SRO proposed rule changes. The technology for electronic filing would be web-based; therefore, the SROs should not have any technology expenditures for electronic filing because all SROs currently have access to the Internet.

However, each SRO would be required to obtain a digital ID from a certificating authority. The Commission staff estimates the annual cost of the ID to be $15 for each SRO. The Commission staff estimates that SROs would purchase two such digital IDs for their staff. Thus, the annual cost of the ID for all SROs would be $810 (27 SROs × $15 × 2).

As previously stated, the SROs could incur nominal costs on posting on their website their proposed rules, amendments thereto, no later than the next business day after filing with or approval by the Commission. With regard to posting of accurate and complete text of SRO final rules, the Commission notes that most of the SROs currently post some of this information, if not all of this information, on their websites. Some SROs currently rely on CCH, Incorporated ("CCH") to maintain a current version of their rules, and a cost may be involved in expediting prompt publication of rule changes with CCH. However, the Commission notes that SROs are required by Sections 6(b)(1),[48] 15A(b)(2),[49] 17A,[50] and 15B[51] of the Act to enforce compliance with their rules. Therefore, at all times, each SRO should maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs would incur material costs in simply posting this information on their websites.

E. Retention Period of Recordkeeping Requirements

The SROs would be required to retain records of the collection of information (the manually signed signature page of the Form 19b–4) for a period of not less than five years, the first two years in an easily accessible place, according to the

[45] The SROs' one hour time savings would result from the elimination of tasks such as making multiple copies of the Form 19b–4 and amendments, arranging for couriers, and making follow-up telephone calls to ensure Commission receipt.

[46] This number includes SRO proposed rule changes that the Commission notices pursuant to Section 19(b)(3)(A) of the Act, which are effective-upon-filing, and SRO proposed rule changes that the Commission notices and accelerates approval in the same document pursuant to Section 19(b)(2) of the Act, along with notices issued by the Commission pursuant to Section 19(b)(2) of the Act.

[47] The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), Chicago Stock Exchange, Inc., Boston Stock Exchange Clearing Corporation, INET Futures Exchange, LLC, and Pacific Clearing Corporation do not appear to post their final rules on their websites.

[48] 15 U.S.C. 78f(b)(1).

[49] 15 U.S.C. 78o–3(b)(2).

[50] 15 U.S.C. 78q–1.

[51] 15 U.S.C. 78o–4.

current recordkeeping requirements set forth in Rule 17a–1 of the Act.[52] The SROs would be required to retain proposed rule changes, and any amendments, on their websites until the proposal is either approved or disapproved. The SRO would be required at all times to maintain an accurate and up-to-date copy of all of its rules on its website.

F. Collection of Information Is Mandatory

Any collection of information pursuant to the proposed amendments to Rule 19b–4 and Form 19b–4 to require electronic filing with the Commission of SRO proposed rule changes would be a mandatory collection of information filed with the Commission as a means for the Commission to review, and, as required, take action with respect to SRO proposed rule changes. Any collection of information pursuant to the proposed amendments to require website posting by the SROs of their proposed and final rules would also be a mandatory collection of information; however, it would not be a collection of information filed with the Commission upon which the Commission would review and take action.

G. Responses to Collection of Information Will Not Be Kept Confidential

Other than information for which an SRO requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, and the posting of proposed and final rules on the SRO website, and thus not information filed with the Commission, the collection of information pursuant to the proposed amendments to Rule 19b–4 and Form 19b–4 under the Act would not be confidential and would be publicly available.[53]

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–18–04. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–18–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Costs and Benefits of the Proposed Rulemaking

The Commission is considering the costs and benefits of the proposed amendments to Rule 19b–4 and Form 19b–4 discussed above. As noted above, the Commission staff estimates that the total annual paperwork reporting burden under the proposed rule would be 29,753 hours. The Commission staff, however, believes that there would be an overall reduction of costs based on the proposed amendments.[54] The Commission encourages commenters to identify, discuss, analyze, and supply relevant data regarding any such costs or benefits.

A. Benefits

The proposed amendments are designed to modernize the filing, receipt, and processing of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. The Commission believes that the proposed changes to Rule 19b–4 and Form 19b–4 would permit SROs to file proposed rule changes with the Commission more quickly and economically. For example, SROs are currently required to pay for delivery costs of multiple paper copies to the Commission as well as the costs associated with monitoring the Commission's Public Reference Room for competitors' rule filings. Requiring SROs to file electronically proposed rule changes should reduce expenses associated with clerical time, postage, and copying and should increase the speed, accuracy, and availability of information beneficial to investors, other SROs, and financial markets.

Because Commission staff would no longer manually process the receipt and distribution of SRO rule filings, electronic filing would also expedite the Commission's receipt of SRO proposed rule changes and provide the SROs with the certainty that the Commission has received the proposed rule changes and has captured pertinent information about the rule changes in SRTS. The Commission believes that integrating the electronic filing technology with SRTS should also enhance the Commission's ability to monitor and process SRO proposed rule changes.

Moreover, requiring SROs to post proposed rule changes on their websites no later than the next business day after filing with the Commission should increase availability of SRO proposed rules, and thereby facilitate the ability of interested parties to comment on proposed rule changes. For instance, the posting of proposed rule changes would provide the public with access to the filings on the SROs' websites and thereby reduce the burden on SRO and Commission staff of providing information about proposed rule changes to interested parties. The Commission believes that the posting of the proposed rule changes would also save SRO resources that are currently being used to monitor the Commission's Public Reference Room for competitors' proposed rule changes. Furthermore, requiring an SRO to post and maintain on its website a current and complete set of its rules could eliminate the confusion among SROs, members of the industry, and the public regarding the accuracy of SRO rule text and facilitate

[52] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 of the Act. 17 CFR 240.17a–6.

[53] However, consistent with applicable law, proposed SRO rule changes containing proprietary or otherwise sensitive information may be kept confidential and nonpublic.

[54] As noted in the Paperwork Reduction Act analysis, the Commission staff based this total reporting burden of 29,753 hours on 27,676 hours for filing proposed rule changes and amendments + 640 hours for posting proposed rule changes and amendments on the SROs' websites + 27 hours for initial posting of accurate SRO rule text on SROs' websites + 1410 hours for updating SRO final rules on SROs' websites.

immediate availability of an SRO's rule text.

B. Costs

As noted, the Commission staff estimates that there would be paperwork reporting costs of 29,753 hours under the proposed rule. The Commission, however, does not expect that the proposed amendments would impose additional costs on SROs. Instead, the Commission believes that the proposed amendments to Rule 19b–4 and Form 19b–4, on balance, would reduce costs related to the submission of SRO proposed rule changes. The technology for electronic filing would be web-based; therefore, the SRO should not have any technology expenditures for electronic filing because all SROs currently have access to the Internet. Most of the information that would be required to be submitted by the SROs electronically is currently submitted in multiple paper copies to the Commission. There are personnel and delivery costs associated with paper filings that would not be incurred with electronic filing. Accordingly, the Commission believes that the proposed amendments to Rule 19b–4 and Form 19b–4, by requiring the SROs to submit proposed rule changes in electronic format, would reduce their costs.

If the proposed changes were adopted, the Commission believes that SROs could incur some costs associated with training their personnel about the procedures for submitting proposed rule changes in electronic format and submission of the information via EAUF. However, the Commission believes that such costs would be one-time costs and insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and would only be required to submit the same information electronically under this proposal. The Commission staff believes that the SROs could also incur some minimal costs (currently $15 per year) associated with purchasing digital IDs for each duly authorized officer electronic signatories.[55] The Commission also believes that the SROs would have to make temporary adjustments to their recordkeeping procedures since, under the proposal, the SROs would be required to print out the Form 19b–4 signature block, manually sign proposed rule changes, and retain the manual signature for not less than five years. However, there should be no additional costs associated with such recordkeeping as SROs are currently required to retain the Form 19b–4 for not less than five years. The Commission requests comment on the anticipated costs, if any, on SROs to comply with the proposed requirement of retaining a manual signature of each proposed rule change submitted electronically.

Moreover, the Commission believes that the proposed requirement that SROs post proposed rule changes, as well as a current and complete version of their rules, on their websites would impose some but not substantial costs on most SROs. The Commission notes that most of the SROs currently post some of this information, if not all of this information, on their websites. Some SROs currently rely on CCH to maintain a current version of their rules, and a cost could be involved in expediting prompt publication of rule changes with CCH or maintaining a current version of their rules at the SRO. However, the Commission notes that SROs are required by Sections 6(b)(1),[56] 15A(b)(2),[57] 17A,[58] and 15B[59] of the Act to enforce compliance with their rules. Therefore, at all times, each SRO should maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs would incur substantial costs in simply posting this information on their websites because if the SRO does not currently maintain a current and complete set of its rules, it should have done so and have provided for such administrative costs.

C. Request for Comment

The Commission requests data to quantify the costs and the benefits above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, which could result from the adoption of these proposed amendments to Rule 19b–4 and Form 19b–4. Specifically, the Commission requests commenters to address whether proposed amendments to Rule 19b–4 and Form 19b–4 that would require electronic filing of SRO proposed rule changes, the posting of these proposed rule changes on the SROs' websites, as well as the posting and maintenance of current and complete sets of rules on the SROs' websites, would generate the anticipated benefits or impose any unanticipated costs on the SROs and the public.

VII. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Act[60] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Act[61] requires the Commission, when promulgating rules under the Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed amendments to Rule 19b–4 and Form 19b–4 are intended to modernize the receipt and review of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. They also are intended to improve the transparency of the SRO rule filing process and facilitate access to current and complete sets of SRO rules. All of these changes should help to foster innovation, increase competition, efficiency, and capital formation and thereby benefit investors.

The Commission generally requests comment on the competitive or anticompetitive effects of these amendments to Rule 19b–4 and Form 19b–4 on any market participants if adopted as proposed. The Commission also requests comment on what impact the amendments, if adopted, would have on efficiency and capital formation. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

VIII. Initial Regulatory Flexibility Analysis

Section 3(a) of the Regulatory Flexibility Act[62] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[63] Twenty-

[55] The Commission staff estimates that each SRO will purchase two of their staff such digital IDs. Thus, the annual cost of the digital ID for all SROs would be $810 (27 SROs × $15 × 2).

[56] 15 U.S.C. 78f(b)(1).

[57] 15 U.S.C. 78o–3(b)(2).

[58] 15 U.S.C. 78q–1.

[59] 15 U.S.C. 78o–4.

[60] 15 U.S.C. 78c(f).

[61] 15 U.S.C. 78w(a)(2).

[62] 5 U.S.C. 603(a).

[63] 5 U.S.C. 605(b).

seven SROs[64]—the 13 national securities exchanges, the 11 clearing agencies, and the two national securities associations and the Municipal Securities Rulemaking Board—would be required to provide the Commission with information pursuant to Rule 19b–4 and Form 19b–4. Rule 19b–4 and Form 19b–4 apply only to SROs and no SRO is a small entity. Accordingly, the Commission certifies that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[65]

IX. Statutory Basis and Text of Proposed Amendments

The amendments to Regulation S–T under the Securities Act of 1933, Rule 19b–4 and Form 19b–4 under the Act are being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(26), 3(a)(27), 3(b), 6, 15A, 15B, 17A, 19(b), 23(a) and 36(a) of the Act.

List of Subjects in 17 CFR Parts 232, 240, and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[64] American Stock Exchange LLC, Boston Stock Clearing Corporation, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Mercantile Exchange, Inc., Chicago Stock Exchange, Inc., The Depository Trust Co., Emerging Markets Clearing Corporation, Fixed Income Clearing Corporation, INET Futures Exchange, LLC, International Securities Exchange, Inc., Midwest Clearing Corporation, Midwest Securities Trust Co., Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., National Futures Association, National Securities Clearing Corporation, The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), New York Stock Exchange, Inc., NQLX, LLC, One Chicago, LLC, The Options Clearing Corporation, Pacific Exchange, Inc., Pacific Clearing Corporation, Pacific Securities Depository Trust, Co., Philadelphia Stock Exchange, Inc., and Stock Clearing Corporation of Philadelphia.

[65] *See* 17 CFR 240.0–10(d) and (e). Paragraph (d) of Rule 0–10 of the Act states that the term "small business," when referring to a clearing agency, means a clearing agency that: (1) Compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Paragraph (e) of Rule 0–10 states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1 under the Act, 17 CFR 2450.11Aa3–1, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. The Commission also has found that the NASD is not a small business.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

2. Section 232.101 is amended by:

a. Removing the word "and" at the end of paragraph (a)(1)(vii);

b. Removing the period at the end of paragraph (a)(1)(viii) and in its place adding "; and";

c. Adding paragraph (a)(1)((ix); and

d. Revising paragraph (c)(9).

The additions and revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(ix) Form 19b–4 (§ 249.819 of this chapter).

* * * * *

(c) * * *

(9) Exchange Act filings submitted to the Division of Market Regulation, except for Form 19b–4 (§ 249.819 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Section 240.19b–4 is amended by:

a. Adding a preliminary note;

b. Revising paragraph (a), the introductory text of paragraph (e), paragraph (f)(2); and

c. Adding paragraphs (j), (k), (l), and (m).

The additions and revisions read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

Preliminary Note: A self-regulatory organization must also refer to Form 19b–4 (17 CFR 249.819) for further requirements with respect to the filing of proposed rule changes.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rules changes by self-regulatory organizations submitted pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7), shall be made electronically on Form 19b–4 (17 CFR 249.819).

* * * * *

(e) For the purposes of this paragraph, *new derivative securities* product means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

* * * * *

(f) * * *

(2) Establishing or changing a due, fee, or other charge applicable only to a member;

* * * * *

(j) Filings with respect to proposed rule changes by a self-regulatory organization submitted on Form 19b–4 (17 CFR 249.819) electronically shall contain an electronic signature. For the purposes of this section, the term *electronic signature* means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Each signatory to an electronically submitted rule filing shall manually sign a signature page or other document, in the manner prescribed by Form 19b–4, authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the rule filing is electronically submitted and shall be retained by the filer in accordance with § 240.17a–1.

(k) If the conditions of this section and Form 19b–4 (17 CFR 249.819) are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the next business day.

(l) The self-regulatory organization shall post the proposed rule change, and any amendments thereto, on its website no later than the next business day after the filing of the proposed rule change,

and any amendments thereto, with the Commission.

(m) The self-regulatory organization shall post and maintain a current and complete version of its rules on its website. The self-regulatory organization shall update its website to reflect rule changes no later than the next business day after it has been notified of the Commission's approval of a proposed rule change filed pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)) or of the Commission's notice of a proposed rule change filed pursuant to section 19(b)(3)(A) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(3)(A) or 15 U.S.C. 78s(b)(7)). If a rule change is not effective for a certain period, the self-regulatory organization shall clearly indicate the effective date in the relevant rule text.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Section 249.819 and Form 19b–4 are revised to read as follows:

[**Note:** Form 19b–4 is attached as Appendix A to this document.]

§ 249.819 Form 19b–4, for electronic filing with respect to proposed rule changes by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file electronically proposed rule changes with the Commission pursuant to section 19(b) of the Act and § 240.19b–4 of this chapter.

By the Commission.

Dated: March 30, 2004.

Margaret H. McFarland,

Deputy Secretary.

[**Note:** Appendix A to the preamble will not appear in the Code of Federal Regulations.]

Appendix A—General Instructions for Form 19b–4

A. Use of the Form

All self-regulatory organization proposed rule changes, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7)[66] of the Securities Exchange Act of 1934 ("Act"), shall be filed in an electronic format through the SRO Rule Tracking System ("SRTS") operated by the Commission. This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Act, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act. National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form.

B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Act (17 CFR 240.0–3).

C. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of the Form 19b–4 Page 1, numbers and captions for all items, responses to all items, and exhibits required in Item 9. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the Form 19b–4 with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year (*i.e.*, SRO–YYYY–XX). If the SRO is filing Exhibit 2 and 3 via paper, the exhibits must be filed within 5 days of the electronic submission of all other required documents.

D. Amendments

If information on this form is or becomes inaccurate before the Commission takes action on the proposed rule change, the self-regulatory organization shall file amendments correcting any such inaccuracy. Amendments shall be filed as specified in Instruction F.

Amendments to a filing shall include the Form 19b–4 Page 1 marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended response to Item 3 shall explain the purpose of the amendment and, if the amendment changes the purpose of or basis for the proposed rule change, the amended response shall also provide a revised purpose and basis statement for the proposed rule change. Exhibit 1 shall be re-filed if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Item 1(a) using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the amendment alters the text of the proposed rule change as it appeared in the immediately preceding filing (even if the proposed rule change does not alter the text of an existing rule), the amendment shall include, as Exhibit 4, the entire text of the rule as altered. This full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (*i.e.*, partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

If, after the rule change is filed but before the Commission takes final action on it, the self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed as Exhibit 2. If information in the communication makes the rule change filing inaccurate, the filing shall be amended to correct the inaccuracy. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

The Commission will not approve a proposed rule change before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law). Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all

[66] Because section 19(b)(7)(C) of the Act states that filings abrogated pursuant to this section should be re-filed pursuant to paragraph (b)(1) of section 19 of the Act, SROs are required to file electronically such proposed rule changes in accordance with this form.

such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) or Section 19(b)(7)(D) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

F. Signature and Filing of the Completed Form

All proposed rule changes, amendments, and withdrawals of proposed rule changes shall be filed through the SRTS. In order to file Form 19b–4 through SRTS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting the Market Regulation Administrator located on our website (*http://www.sec.gov*). E-mail will be sent to the requestor that will provide a link to a secure website where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b–4 as indicated on Page 1 of the form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b–4, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall also file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board shall also file copies of the form, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

G. Procedures for Submission of Paper Documents for Exhibits 2 and 3

To the extent that Exhibits 2 and 3 cannot be filed electronically in accordance with Instruction F, four copies of Exhibits 2 and 3 shall be filed with the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001. Page 1 of the electronic Form 19b–4 shall accompany paper submissions of Exhibits 2 and 3. If the SRO is filing Exhibit 2 and 3 via paper, they must be filed within five days of the electronic filing of all other required documents.

H. Withdrawals of Proposed Rule Changes

If a self-regulatory organization determines to withdraw a proposed rule change, it must complete Page 1 of the Form 19b–4 and indicate by selecting the appropriate check box to withdraw the filing.

I. Procedures for Granting an Extension of Time for Commission Final Action

After the Commission publishes notice of a proposed rule change, if a self-regulatory organization wishes to grant the Commission an extension of the time to take final action as specified in Section 19(b)(2), the self-regulatory organization shall indicate on the Form 19b–4 Page 1 the granting of said extension as well as the date the extension expires.

BILLING CODE 8010–01–P

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	
Estimated average burden hours per response.....	34

Page 1 of ☐

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - ☐ - ☐
Amendment No. ☐

Proposed Rule Change by: Select SRO

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☐ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☐ Section 19(b)(3)(A) ☐ Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name ☐ Last Name ☐
Title ☐
E-mail ☐
Telephone ☐ Fax ☐

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date ☐
By ☐ ☐
(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the SRTS Online Filing website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Information To Be Included in the Completed Form ("Form 19b–4 Information")

1. Text of the Proposed Rule Change

(a) Include the text of the proposed rule change. Changes in, additions to, or deletions from, any existing rule shall be set forth with brackets used to indicate words to be deleted and underscoring used to indicate words to be added.

If any form, report, or questionnaire or the completion of such is

(i) proposed to be used in connection with the implementation or operation of the proposed rule change, or

(ii) prescribed or referred to in the proposed rule change, or

(iii) voluntary or required pursuant to an existing rule of the self-regulatory organization, such form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3. If the form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the documents shall be filed in accordance with Instruction G.

(b) If the self-regulatory organization reasonably expects that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change on the application of such other rule.

(c) Include the file numbers for prior filings with respect to any existing rule specified in response to Item 1(b).

2. Procedures of the Self-Regulatory Organization

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the self-regulatory organization (by amendment if initial filing is prior to completion of final action). See Instruction E.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.*, brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and

(b) With respect to the proposed rule changes filed pursuant to both Sections 19(b)(1) and 19(b)(2) of the Act, explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to a proposed rule change filed pursuant to Section 19(b)(1) of the Act that has been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

Note 1: *National Securities Exchanges and Registered Securities Associations.* Under Sections 6 and 15A of the Act, rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. Rules of a registered securities association may not fix minimum profits or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

Under Section 11A(c)(5) of the Act, a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

Note 2: *Registered Clearing Agencies.* Under Section 17A of the Act, rules of a registered clearing agency may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A of the Act or the administration of the clearing agency, and may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

Note 3: *Municipal Securities Rulemaking Board.* Under Section 15B of the Act, rules of the Municipal Securities Rulemaking Board may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, may not fix minimum profits, or impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act with respect to municipal securities or the administration of the Board.

4. Self-Regulatory Organization's Statement on Burden on Competition

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization. The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issue is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.

6. Extension of Time Period for Commission Action

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

Note: The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until it shall file an amendment which specifically states that the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act shall begin to run on the date of filing such amendment.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) If the proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragraph (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) establishes or changes a due, fee, or other charge applicable only to a member,

(iii) is concerned solely with administration of the self-regulatory organization,

(iv) effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the

service, and set forth the basis on which such designation is made,

(v) effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or

(vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. If it is requested that the proposed rule change become operative in less than 30 days, provide a statement explaining why the Commission should shorten this time period.

(c) In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires that the proposed rule change should be put into effect summarily by the Commission.

Note: The Commission has the power under Section 19(b)(3)(C) of the Act to abrogate summarily within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

State whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule, as the filing self-regulatory organization understands it. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.

9. Exhibits

List of exhibits to be filed, as specified in Instructions C and D:

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the **Federal Register**. Amendments to Exhibit 1 should be filed in accordance with Instruction D and F.

Exhibit 2. (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments. If such notices and comments cannot be filed electronically in accordance with Instruction F, the notices and comments shall be filed in accordance with Instruction G.

(b) Copies of any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a copy of the summary of comments on the proposed rule change made at such meeting. If such transcript of comments or summary of comments cannot be filed electronically in accordance with Instruction F, the transcript of comments or summary of comments shall be filed in accordance with Instruction G.

(c) If after the proposed rule change is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed in accordance with Instruction F. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

Exhibit 3. Copies of any form, report, or questionnaire covered by Item 1(a). If such form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the form, report, or questionnaire shall be filed in accordance with Instruction G.

Exhibit 4. For amendments to a filing, marked copies, if required by Instruction D, of the text of the proposed rule change as amended.

Exhibit 5. The SRO may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b–4. Exhibit 5 shall be considered part of the proposed rule change.

Specific Instructions for Exhibit 1—Notice of Proposed Rule Change

Exhibit 1

Securities and Exchange Commission

[Release No. 34– ; File No. SR]

Self-Regulatory Organizations

Proposed Rule Change By (Name of Self-Regulatory Organization) Relating to (brief description of subject matter of proposed rule change)

General Instructions

A. Format Requirements

Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

B. Need for Careful Preparation of the Notice

The self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. The Commission cautions self-regulatory organizations to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b–4 it accompanies. Any filing that does not comply with the requirements of Form 19b–4, including the requirements applicable to the notice, may, at any time before the Commission issues a notice of filing, be returned to the self-regulatory organization. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b–4.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on (date),[67] the (name of self-regulatory organization) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Information to Be Included in the Completed Notice

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Supply a brief statement of the terms of substance of the proposed rule change. If the

[67] To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. *See* Instruction B to Form 19b–4.

proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underlined for words to be added.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, and 5 of Form 19b–4, redesignating them as (A), (B), and (C), respectively.)

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2), the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3) and subparagraph (f) of Securities Exchange Act Rule 19b–4, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) After consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC website (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov*. Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to file number XX; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[68]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–7538 Filed 4–2–04; 8:45 am]

BILLING CODE 8010–01–P

[68] 17 CFR 200.30–3(a).

Federal Register

Monday,
April 5, 2004

Part VI

Department of Health and Human Services

Announcement of Availability of Funds for Family Planning Male Training Grant; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Family Planning Male Training Grant

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) of the Office of Population Affairs (OPA) announces the availability of funds for one grant to establish a training project that focuses on family planning and reproductive health information, education, and clinical services targeting males. The successful applicant will provide training that will enhance and support quality services for males served in Title X family planning services projects throughout the United States.

CFDA Number: 93.260.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Grants Management Office no later than June 4, 2004 and within the time frames specified in this announcement for electronically submitted, mailed, and/or hand-carried applications.

Executive Order 132372 comment due date: June 4, 2004.

ADDRESSES: Mailed applications must be submitted to Ms. Karen Campbell, Director, Grants Management Office, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Questions regarding program requirements may be directed to Susan B. Moskosky, Director, Office of Family Planning, OPA, (301) 594–4008. Questions regarding administrative or budgetary requirements may be directed to Karen Campbell, Director, OPHS Grants Management Office, (301) 594–0758.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

This announcement seeks proposals from public and nonprofit private entities to establish and operate a training project with a specific focus on family planning and reproductive health information, education, and clinical services targeting males. The grantee will be required to provide training that will enhance and support quality information, education, communication, and clinical services for males served in Title X-funded agencies throughout the United States.

Background

The family planning program, authorized by section 1001 of Title X is required to provide family planning services, including information, education, and counseling, to all persons desiring such services. Over the past 30 years, males have comprised only two to four percent of clients served by the Title X family planning clinical service delivery system annually.

Since the mid-1990s, the Office of Family Planning (OFP) in the Office of Population Affairs (OPA) has focused efforts on enhancing services available to males. The recent interest in encouraging male involvement in family planning and reproductive health is driven by the current epidemic of sexually transmitted diseases (STDs), including HIV/AIDS, and high rates of unintended pregnancies, as well as by shifts in public health policies. Fighting the fatherless epidemic, promoting responsible fatherhood, and supporting healthy marriages are major public health concerns. Similarly, recognition of the health, education, and psychosocial consequences of early sexual activity has led to an increased focus on extra-marital abstinence. Involving males in family planning and reproductive health issues is one way to encourage and support positive health outcomes and healthy families.

Males have sexual and reproductive health needs across the life span. Accurate information regarding the physical and emotional changes that occur during adolescence and young adulthood should be available. Programs serving young males should also provide information and education that supports avoiding health risks such as smoking, substance abuse, and premature sexual activity. Delaying sexual debut until after adolescence, and preferably until marriage, should be encouraged. For sexually active young males, information and appropriate clinical services and referrals should be available to address health concerns such as STDs, HIV/AIDS, unintended pregnancy, and the emotional stress of interpersonal and intimate relationships.

Among middle-aged and older males, health concerns around sexual and reproductive health continue, though the concerns may include additional issues beyond those of younger males. Examples include general health issues, such as hypertension or diabetes, which may impact reproductive health.

The family planning and reproductive health issues facing males are complicated by the different attitudes and expectations that men and women have toward health care. Even when men visit a health care provider, they are more reluctant than women to bring problems of a reproductive or sexual nature to their clinician's attention. Many clinical settings are not "male-friendly." Involving men in their own care requires a different approach from that which has been successful with women.

Male reproductive health is an emerging field. Current and future research will add significantly to the body of knowledge related to serving males. Emerging research related to male reproductive health should provide evidence-based information that will enable providers to develop effective male reproductive health educational and clinical service programs. This emerging body of knowledge should also provide the basis for training content and approach. The grantee funded under this announcement must be able to incorporate current, evidence-based information as it becomes available in all phases of training design, delivery, and evaluation.

Purpose of the Grant

The purpose of the training program to be funded under this announcement is to ensure that personnel working in Title X family planning services projects have the knowledge, skills, and abilities necessary to effectively provide family planning and reproductive health information, education, and clinical services targeting males. The successful applicant will use evidence-based information and approaches in all aspects of training. The Male training grantee will be required to maintain knowledge of the most current research regarding male family planning and reproductive health issues, and will act as a resource on male reproductive health issues to other entities involved in family planning service delivery.

Program Statutes and Regulations

Title X of the PHS Act, 42 U.S.C. 300, *et.seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to

entities to provide training for personnel to carry out family planning service programs. Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service personnel. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute and the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A). Copies of the Title X statute, regulations and "Program Guidelines for Project Grants for Family Planning Services" (January 2001) can be obtained by contacting the OPHS Grants Management Office or may be downloaded from the OPA Web site at *http://opa.osophs.dhhs.gov.*

A copy of the legislation and regulations governing this program will be included as part of the application kit package. Applicants should use the legislation, regulations, and other information included in this announcement to guide them in developing their applications.

II. Award Information

OPA intends to make available approximately $400,000–$500,000 per year to support one male training grantee. The grant will be funded in annual increments (budget periods) and may be approved for a project period of up to five years. Indirect costs may not exceed eight percent of the annual award. Funding for all budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress on the project, and adequate stewardship of Federal funds.

III. Eligibility Information

1. *Eligible Applicants:* Any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federal States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for this Title X family planning male training grant.

2. *Cost Sharing or Matching:* A match of non-Federal funds is not required.

3. *Other:* Applicant organizations must demonstrate significant experience in the design, development, implementation, successful completion, and evaluation of training activities. In addition, the successful applicant must demonstrate skill and experience in providing training to diverse, community-based entities. The successful applicant will provide evidence of familiarity with male family planning and reproductive health issues, and the ability to translate evidence-based information into training activities.

Awards will be made only to those organizations or agencies which have met all applicable requirements and which demonstrate the capability or providing the proposed services.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits may be requested from, and applications submitted to: OPHS Grants Management Office, 1001 Wootton Parkway, Suite 550, Rockville, MD 20852, (301) 594–0758. Application kits are also available online through the OPA Web site at *http://opa.osophs.dhhs.gov*, may be requested by fax at (301) 594–9399, or may be obtained through the electronic grants management system, e-Grants. (Instructions for use of the e-Grants system can be found on the OPA Web site or requested from the OPHS Grants Management Office).

2. *Content and Form of Application Submission:* Applications must be submitted on the Form OPHS–1 (Revised 06/01) and in the manner prescribed in the application kit. Applications are limited to 50 double-spaced pages, not including appendices and required forms, using an easily readable, 12 point font. All pages, charts, figures, and tables should be numbered. Appendices may provide curriculum vitae, organizational structure, examples of organizational capabilities, or other supplemental information that supports the application. All information that is critical to the proposed project should be included in the body of the application. Appendices are for supportive information only and should be clearly labeled.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

Dun and Bradstreet Universal Numbering System (DUNS)

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps needed to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

Program Requirements/Application Content

The male training grantee will be responsible for maintaining current, evidence-based information regarding male issues and family planning and reproductive health information, education, and clinical services for males, and for making this information available to Title X providers. The application should demonstrate knowledge of evidence-based learning theory and adult learning behavior, and should describe how this relates to proposed activities. The application should also demonstrate the applicant's expertise and ability to develop, implement, manage, and evaluate training in the areas of information, education, and communication; program management; and clinical services related to male family planning and reproductive health. The design of the male training program, including all curricula and materials, must be consistent with Title X statute and regulations.

Legislative Mandates

The following legislative mandates have been part of the Title X appropriations for each of the last several years. In developing a proposal, each applicant should describe how the proposed project will address each of these legislative mandates in training related to male family planning and reproductive health.

- None of the funds appropriated in this Act may be made available to any entity under Title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities; and
- Not withstanding any other provision of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child

molestation, sexual abuse, rape, or incest.

Scope of the Project

The family planning male training grant is intended to serve a national network of providers. In order to maximize the impact of the grant on a national level, it is expected that the successful applicant will work closely with the OFP Central and Regional Offices and the ten Title X Regional Training Centers (RTCs). Proposed activities should focus on:

(1) Conducting training events that focus on family planning and reproductive health information, education, and clinical services targeting males, and that will enhance and support quality family planning and reproductive health services for males;

(2) developing strategies to translate research on male health education and service delivery (especially related to family planning and reproductive health) into effective educational and clinical practice through training;

(3) developing and disseminating training materials and resources related to male family planning and reproductive health;

(4) supporting appropriate speakers at Title X-approved training events for personnel; and

(5) building the capacity of the RTCs to provide male-focused training for personnel working in Title X service projects.

The proposed project must include all of the activities in each of the program components that follows: (1) program planning and management; (2) training events; and (3) maintaining, adapting, and disseminating information. The application should fully describe how each of these should be addressed.

Program Planning and Management

- Conduct a periodic assessment (at least every two years) of the training needs of Title X providers regarding male family planning and reproductive health issues.
- Incorporate legislative mandates into training activities as they relate to family planning and reproductive health information, education, and clinical services for males.
- Maintain data and provide OPA with an annual progress report on all activities supported with grant funds, which includes, at a minimum:
  a. Title of event
  b. Location
  c. Content
  d. Presenter (as applicable)
  e. Number of participants
  f. Agencies sponsoring participants
- Provide for an ongoing evaluation plan that assesses the total training program, as well as individual components and training events.

Training Events

The grantee is expected to consult with the OFP project officer and receive prior approval for each of the following training events prior to implementation:

- Provide support for one male family planning training meeting per year. This includes meeting costs (meeting planning, dissemination of meeting information, registration of participants, hotel/meeting space rental, meeting materials, etc) for approximately 150 attendees.
- Provide for at least one one-week on-site training activity each year for up to 40 persons each, including meeting costs (meeting planning, hotel/meeting space rental, meeting materials, etc.) lodging, and per diem (excluding travel) for participants.
- Each year, provide support for speaker participation in Title X-sponsored training events with the approval of the OFP project officer. (This includes travel, lodging, and per diem and consultant fees for up to 10 speakers per year at a total cost not the exceed $2,000 per speaker.)
- In consultation with and prior approval of the OFP project officer, convene up to three expert panels per year around specific male family planning and reproductive health topic areas. Responsibilities include meeting costs (meeting planning, hotel/meeting space rental, meeting materials, etc.) lodging, per diem, and travel-related expenses for non-Federal participants. Each panel will include up to 15 participants, not including any Federal staff.
- Assist Title X Regional Training Centers in developing content around male issues for Regional training events.

Maintaining, Adapting, and Disseminating Information

The successful applicant will describe a strategy for assuring the availability of the most current research findings related to male family planning and reproductive health information, education, and clinical service delivery. In addition, the successful applicant will describe a system for making this information readily accessible and easily retrievable for Title X service grantees and personnel. At a minimum, this will include how the applicant will achieve the following:

- Maintain a system for ongoing retrieval and dissemination of current, evidence-based information and research findings related to male family planning and reproductive health.
- Identify and/or develop evidence-based training resources regarding family planning and reproductive health issues for males. These materials must be made available at cost to other Title X projects upon request.
- In consultation with OFP project officer, adapt and/or refine male health educational resources for use in training personnel working in Title X family planning services projects.
- Describe a strategy for assuring that all training resources developed or utilized by the grantee are reviewed by the OFP project officer prior to dissemination.

The grantee will be responsible for all costs associated with training program administration and management, and for training costs directly associated with any on-site portion of Title X-sponsored trainee preparation (*e.g.*, educational materials, classroom and training sites, etc.) as described above. The grantee will also be required to work closely with the OFP project officer to accomplish the purposes of this grant. The successful application will describe a strategy for maintaining budget flexibility in order to accommodate unanticipated or emerging training needs. The successful applicant will be required to participate in at least two meetings per year with the OFP project officer and other OPA staff at the OPA Office in Rockville, Maryland, or at an alternate location as specified. In addition, the grantee should be prepared to participate in at least one conference call per month with the OFP project officer and others as necessary.

In responding to this announcement, applicants should familiarize themselves with:

- Title X Priorities, Legislative Mandates, and Key Issues;
- Department of Health and Human Services Departmental Priorities;
- Healthy People 2010—Chapter 9, "Family Planning;" Chapter 11, "Health Communications;" Chapter 13, "Sexually Transmitted Disease; " Chapter 25, "HIV;'
- The document "Community-Based Sexual and Reproductive Health Promotion;" and
- "Education Programs for Males: Components that Work."

Copies of these documents are included in the application kit for this announcement.

3. *Submission Dates and Times:* The OFP provides multiple mechanisms for submission of applications.

Electronic Submission: The OFP encourages electronic submission of grant applications using the OPHS e-Grants system. Instructions for use of

this system are available on the OPA Web site, *http://opa.osophs.dhhs.gov*, or may be requested from the OPHS Grants Management Office at (301) 594–0758.

The body of the application and required forms can be submitted using the e-Grants system. In addition to electronically submitted materials, applicants are required to provide a hard copy of the application face page (Standard Form 424 [Revised 07/03]) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The application is not considered complete until both the electronic application and the hard copy face page with original signature are received. Both must be received on or before the due date listed in the **DATES** section of this announcement.

Hard Copy Applications

Applications submitted in hard copy must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management on or before the deadline listed in the **DATES** section of this announcement. The application due date requirement specified in the announcement supercedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread.

Hand-delivered applications must be received by the OPHS Grants Management Office no later than 4:30 p.m. Eastern Standard time on the application due date. Applications delivered to the OPHS Grants Management Office after the deadline described above will not be accepted for review. Applications sent via facsimile or by electronic mail outside the e-Grants system will not be accepted for review. Applications which do not conform to the requirements of this program announcement or which do not meet the applicable parts of 42 CFR part 59, subpart C, will not be accepted for review, and will be returned to the applicant.

4. *Intergovernmental Review:* Applicants under this announcement are subject to the requirements of Executive Order 132372, "Intergovernmental Review of Federal Programs," as implemented by CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the State in which the applicant is located. The application kit contains the currently available listing of the SPOCs that have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC should forward any comments to the OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. The SPOC has 60 days from the closing date of this announcement to submit any comments. For further information, contact the OPHS Grants Management Office at (301) 594–0758.

5. *Funding Restrictions:* The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

6. *Other Submission Requirements: See* Section IV.3.

V. Application Review Information

1. *Criteria:* Eligible competing grant applications will be assessed according to the following criteria:

Criterion 1: The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205; (25 points)

Criterion 2: The extent to which the proposed male training program promises to fulfill the family planning services delivery needs of the area to be served, as evidenced by the applicant's ability to address:

a. Requirements set out under "*Program Requirements/Application Content*" of ths announcement;

b. Development of a capability within family planning services projects with a male-services component to provide pre- and in-service training to their own staffs; and

c. Improvement of the family planning/reproductive health skills of personnel in family planning services project that have a male-services component. (Total 25 points);

Criterion 3: The competence of the project staff in relation to the services to be provided, including the applicant's history of male-focused training, research, and/or services to males and the ability to document relevant previous experience and formal linkages with public and private entities that have a specific focus on males. (25 points);

Criterion 4: The administrative and management capability and competence of the applicant. (10 points);

Criterion 5: The extent to which the proposed training program will increase the ability of family planning services projects to deliver services primarily to males with a high percentage of unmet need for family planning services. (10 points); and

Criterion 6: The capacity of the applicant to make rapid and effective use of the training grant, as evidenced by the applicant's ability to implement the training program within 120 days of receiving the grant. (5 points).

2. *Review and Selection:* Eligible competing grant applications will be reviewed by a multi-disciplinary panel of independent reviewers. Final award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA). In making these decisions, the DASPA will fund one project which will, in her judgement, best promote the purposes of sections 1001 and 1003 of the Act, within the limits of funds available for such a project, and she will take into consideration:

(1) Recommendations of the review panel;

(2) reviews for programmatic and grants management compliance;

(3) the reasonableness of the estimated cost to the government considering the available funding and anticipated results; and

(4) the likelihood that the proposed project will result in the benefits expected.

VI. Award Administration Information

1. *Award Notices:* The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, signed by the Director of the OPHS Grants Management Office, which specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, and terms and conditions of the grant award. OPA does not release information about individual applications until final funding decisions have been made. When final

decisions have been made, applicants will be notified by letter regarding the outcome of their application.

2. *Administrative and National Policy Requirements:* In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

Within 60 days of receiving the Notice of Grant Award, a finalized work plan for year one of the project will be negotiated with the OFP Project Officer. In the succeeding years, the training plan and other training events will be a part of the continuation application. The OFP will identify training priorities for the coming year to the male training program within 60 days of the due date for the continuation application.

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the notice is available electronically on the OMB home page at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. *Reporting:* A successful applicant under this notice will submit: (a) Annual progress reports; (b) annual Financial Status Reports; and (c) a final progress report and Financial Status Report. Reporting formats are established in accordance with provisions of the general regulations which apply under 45 CFR parts 74 and 92. Applicants must submit all required reports in a timely manner, in recommended formats (to be provided) and submit a final report on the project, including any information on evaluation results, at the completion of the project period. Agencies receiving $500,000 or more in total Federal funds are required to undergo an annual audit as described in OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

VII. Other Information

Definitions: For the purposes of this announcement, the following definitions apply:

Application—a request for financial support of a project submitted to the OPHS Grants Management Office on specified forms and in accordance with instructions provided.

Evidence-based—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

Family planning training—"job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services" (42 CFR 59.202(e)).

Grant—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a *grantee* or *recipient* is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

Project—those activities described in the grant application and supported under the approved budget.

Regional Training Center—There is one Title X-funded Regional Training Center (RTC) in each Public Health Service Region. Each training center provides general training and technical assistance consultation to Title X service providers in the applicable Region regarding program management; family planning and related preventive health information and education; and clinical services. The training and technical assistance provided is general in nature, and addresses Title X Priorities, Legislative Mandates, Key Issues, and HHS Priorities.

Dated: March 18, 2004.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 04–7628 Filed 4–2–04; 8:45 am]

BILLING CODE 4150–34–P

Federal Register

Monday,
April 5, 2004

Part VII

Department of Health and Human Services

Availability of Funds for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Funds for Adolescent Family Life Demonstration Projects

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) of the Office of Population Affairs requests applications for prevention grants under the Adolescent Family Life (AFL) Demonstration Projects, as authorized by Title XX of the Public Health Service Act. These Title XX grants should clearly and consistently focus on promoting abstinence as the most effective way of preventing unintended pregnancy and sexually transmitted infections (STIs), including HIV/AIDS, and the avoidance of other risky behavior. All pre-adolescents and adolescents under age 19 are eligible for services. Funds will be competitively awarded to approximately 10 projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

CFDA: A description of the Title XX program can be found at the OMB Catalog of Federal Domestic Assistance 93.995.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS), Office of Grants Management no later than June 4, 2004. Mailed applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management not later than 5 p.m. Eastern Standard time on the application due date. Applications will not be accepted by fax, nor will the submission deadline be extended. The application due date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread. See heading **Application and Submission Information** for additional information.

ADDRESSES: Applications must be submitted to Ms. Karen Campbell, Director, OPHS Grants Management Office, Office of Public Heath and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Regarding program requirements, OAPP staff are available at (301) 594–4004 to answer questions and provide technical assistance on the preparation of grant applications. Questions may also be directed to OAPP staff via e-mail at *http://opa@osophs.dhhs.gov.* If contacting OAPP by e-mail, please include the phrase "AFL Prevention Question" in the subject heading. For assistance on administrative or budgetary requirements, contact the OPHS Grants Management Office, (301) 594–0758.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents, and their families. These grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging pre-adolescents and adolescents to abstain from sexual activity until marriage through provision of age-appropriate education on sexuality and decision-making skills.

The specific services which may be funded under Title XX are listed below under the heading entitled *Prevention Services.*

Applicants should consider issues such as compliance with State reporting laws regarding child sexual abuse, sexual assault (including statutory rape), incest, or family violence in the development of their proposals. For more information, applicants may access the National Clearinghouse on Child Abuse and Neglect website at *http://nccanch.acf.hhs.gov/.*

I. Funding Opportunity Description

Prevention Services

Under this announcement, funds are available for abstinence education PREVENTION projects only. Community-based, community-supported, faith-based, and school-based applicants are encouraged to apply. The project site must be identified in the application rather than selected after the grant is awarded.

Under the Title XX statute, the primary purpose of prevention programs is to find effective means of reaching pre-adolescents and adolescents, both male and female, before they become sexually active in order to encourage them to abstain from sexual activity and other risky behaviors. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy, but also substantial health risks to adolescent health and well-being, primarily infection with STIs, including HIV/AIDS, and is associated with increased risk of school problems, depression, and substance use. Accordingly, applicants must clearly and consistently focus on abstinence as the most effective way of preventing unintended pregnancy and STIs, including HIV/AIDS, and must provide services that help pre-adolescents and adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity and other risky behaviors. Any information provided for pre-adolescents and adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the most effective choice and is what the project recommends.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. However, OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological, and health gains to be realized by abstaining from sexual activity.

The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and pre-adolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

Abstinence Education

In addition to the Title XX statutory requirements, programs must be consistent with the definition of "abstinence education," as set out in

section 510(b)(2) of title V of the Social Security Act, as amended. Accordingly, under this announcement the term "abstinence education" means an educational or motivational program which:

(1) Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(2) Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(3) Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(4) Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(5) Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(6) Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(7) Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(8) Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Youth Development or Developmental Assets Approach

Adolescents need to acquire capacity building and coping skills that assist them in making healthier decisions with respect to: relationships and dating, education, career goal setting, violence, gangs, alcohol and other drugs, and poverty. Youth development or developmental assets strategies encompass strengthening families, fostering relationships with adult mentors, involving youth in community service, promoting connectedness with school, providing opportunities to engage in sports and cultural activities, and building confidence and self-esteem; all are designed to strengthen supports, either internal or external, for youth as they transition to adulthood and prepare for career, marriage, and families. Where possible, pre-adolescents and adolescents should be an integral part of the design, implementation, and evaluation of this approach.

Parental Involvement

Parents are their children's first and most important teachers. Research has shown the importance of parental involvement and open communication between parent and child in the prevention of adolescent sexual activity, as well as other risk behaviors such as tobacco, alcohol, and drug use. Successful prevention programs should include a component that provides:

(1) services that strengthen parental capacity to help their child deal with issues such as delaying sexual activity, poverty, academic difficulties, alcohol and drug use, gang involvement, peer pressure and violence in the community and in the home;

(2) a variety of activities that help build and maintain strong families while fostering healthy and positive communication about health, risk avoidance, decision making, setting and meeting goals, and shared values; and

(3) accessible programming that engages parents by understanding and meeting their needs.

Helping our young people successfully negotiate adolescence and avoid premarital sexual activity, as well as other health risk behaviors, requires not only educating and motivating them—it also requires ensuring that they have adequate support systems. To that end, the OAPP encourages applicants to incorporate youth development concepts in their prevention program, as well as a strong and viable parental involvement component. Note however, that all services provided by Title XX grantees, including all activities that are part of the youth development and/or parental involvement component, must be within the scope of the Title XX prevention services listed above and must be consistent with the definition of "abstinence education," as set out in section 510(b)(2) of title V of the Social Security Act.

Goals and Objectives

All applications should include a program goal statement and related outcome objectives. A goal is a general statement of what the project hopes to accomplish. It should reflect the long-term desired impact of the project on the target group(s) as well as reflect the program goals contained in this program announcement. An outcome objective is a statement which defines a measurable result the project expects to accomplish. Outcome objectives should be described in terms that measure the results the project will bring about (*e.g.*, decrease in premarital sexual activity among the treatment group, increase in intent to remain abstinent among the treatment group). Good applications should contain three to five outcome objectives that are specific, measurable, achievable, realistic, and time-framed (S.M.A.R.T.).

*S*pecific: An objective should specify one major result directly related to the program goal, state who is going to be doing what, to whom, by how much, and in what time-frame. It should specify what will be accomplished and how the accomplishment will be measured.

*M*easurable: An objective should be able to describe in realistic terms the expected results and specify how such results will be measured.

*A*chievable: The accomplishment specified in the objective should be achievable within the proposed time line and as a direct result of program activities.

*R*ealistic: The objective should be reasonable in nature. The specified outcomes, expected results, should be described in realistic terms.

*T*ime-framed: An outcome objective should specify a target date or time for its accomplishments. It should state who is going to be doing what, by when, *etc.* The Public Management Institute, *How to Get Grants* (1981).

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent, but not more than five percent, of the Federal funds received under Title XX on evaluation of the project. In cases in which a more rigorous or comprehensive evaluation effort is proposed (see sec. 2006(b)(1)) waivers of the five percent limit on evaluation may be granted by OAPP. Under this announcement, OAPP is requesting applications for evaluation-intensive projects. For evaluation-intensive projects, OAPP will waive the five percent limit up to a maximum of 25 percent. Applicants are expected to include a clear and fully developed evaluation plan that meets the following six criteria.

1. Evaluations will be directly tied to program objectives. Research hypotheses will be clearly stated and reflect the outcomes the program intends to achieve.

2. Evaluations will include a process or implementation evaluation. Evaluations in their first year will focus on determining that the intervention is in place, that it is adequately and appropriately staffed, and that it is reaching its intended population.

3. Evaluations will have a viable comparison strategy. If a true experimental design with random assignment is not possible, a quasi-experimental design with matched comparison group would be acceptable.

4. Evaluations will have sufficient sample size to ensure that any observed differences between groups are significant.

5. Evaluations will measure dosage. Client participation and use of various service components must be carefully tracked so that any differences can be corrected for, or at least taken into account in discussion of evaluation results.

6. Evaluations will include a follow-up assessment of program participants at least six months after the intervention being tested ends. This follow-up assessment should be in the same format as the pre- and post-testing instrumentation.

In addition, applications should clearly demonstrate the capacity to participate in a cross-site evaluation, as well as the understanding that use of a core evaluation instrument, currently being developed by OAPP, will be incorporated into the outcome evaluation design.

Section 2006(b)(2) of Title XX requires that evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluation, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator. It is important to establish this relationship when preparing the application to ensure that the evaluation plan is consistent with the project's goals and objectives and also meets the other evaluation criteria specified above.

Curriculum Review

The grantee shall submit all curricula and educational materials proposed for use in the AFL project, whether currently available or to be developed by the grantee, to OAPP for review and approval prior to use in the project. The review shall ensure that these materials are medically accurate, consistent with Title XX policies on religion, in compliance with the statutory prohibitions against advocating, promoting, encouraging, or providing abortions, and consistent with the definition of "abstinence education," as set out in section 510(b)(2) of title V of the Social Security Act, as amended.

II. Award Information

Under this program announcement, OAPP intends to make available approximately $3.5 million to support an estimated 10 new PREVENTION demonstration projects. The awards will not exceed $300,000. Please note, in fiscal year (FY) 2002, OAPP issued a similar Request for Applications (RFA) announcing approximately $7.8 million for new abstinence education prevention demonstration projects. In response to that RFA, OAPP received 261 grant applications and was able to fund only 37 new projects.

Grants may be approved for project periods of up to five years, and are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.

Applications are encouraged from organizations which are currently operating programs that have the capability of expanding and enhancing these services to serve significant numbers of pre-adolescent and adolescents according to the guidelines specified in this announcement. Applications are also encouraged from organizations that have the capability to conduct a rigorous evaluation of the funded project.

III. Eligibility Information

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, only those organizations or agencies which demonstrate the capability of providing the proposed services and meet the statutory requirements are considered for grant awards. Faith-based and community-based organizations are encouraged to apply for AFL grants. Please note, however, that no funds provided through the AFL program may be expended for inherently religious activities, such as worship, religious instruction, and proselytization. If an organization engages in such activities, they must be offered separately in time or location from the program funded under the AFL program and participation must be voluntary for program beneficiaries. An AFL program, in providing services and outreach related to program services, cannot discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

Cost Sharing

Applicants funded under this announcement will be required to match federal funding provided by the OAPP. An AFL grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The AFL non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services. Other Federal funds may not be used as an in-kind contribution.

IV. Application and Submission Information

Address to Request Application Package: Application kits consisting of the OPHS–1 and appropriate forms, a copy of the Title XX legislation, a computer based technical assistance program to instruct applicants in the Title XX grant writing process, and guidance on the application process may be downloaded from *http://opa.osophs.dhhs.gov.* If you do not have access to the INTERNET, you may obtain a kit from the OPHS Office of Grants Management; 1101 Wootton Parkway, Suite 550; Rockville, MD 20852; by phone (301) 594–0758 or by fax (301) 594–9399. The computer based technical assistance program on CD–ROM will be included in the kit. All completed applications must be submitted to the OPHS, Office of Grants Management at the above mailing address. In preparing the application, it is important to follow ALL instructions provided in the application kit.

Content and Form of Application Submission: Applications must be submitted on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The program narrative should not be longer than 50 double-spaced pages, not including appendices and required forms, using an easily readable, 12 point font. All pages, figures and tables should be numbered.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps necessary to obtain one. Instructions for obtaining a DUNS number are included in the application package, and may be downloaded from the OPA Web site.

Submission Dates and Times

The OAPP provides multiple mechanisms for submission of applications.

Electronic Submission: The OAPP encourages electronic submission of grant applications using the OPHS e-Grants system. Instructions for use of this system are available on the OPA Web site at *http://opa.osophs.dhhs.gov*, or may be requested from the OPHS Grants Management Office at (301) 594–0758.

The body of the application and required forms can be submitted using the e-Grants system. In addition to electronically submitted materials, applicants are required to provide a hard copy of the application face page (Standard Form 424 [Revised 07/03]) with the original signature of an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. The application is not considered complete until both the electronic application and the hard copy of the face page with the original signature are received. Both must be received on or before the due date listed in the **DATES** section of this announcement.

Hard Copy Applications: Applications submitted in hard copy must include an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Intergovernmental Review

Applications for AFL grants must also meet both of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant. An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Funding Restrictions

Applicants for discretionary grants are expected to anticipate and justify their funding needs and the activities to be carried out with those funds in preparing the budget and accompanying narrative portions of their applications. The basis for determining the allowability and allocability of costs charged to Public Health Service (PHS) grants is set forth in 45 CFR parts 74 and 92. If applicants are uncertain whether a particular cost is allowable, they should contact the OPHS, Office of Grants Management at (301) 594–0758 for further information.

V. Application Review Information

Criteria

Eligible competing grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and will be assessed according to the following criteria:

(1) The applicant's presentation of an organizational model for service delivery with appropriate design, consistent with the requirements of Title XX. (25 points)

(2) The applicant's presentation of a detailed evaluation plan that indicates an understanding of program evaluation methods, reflects a practical and technically sound approach to assessing both the project's implementation and its outcomes, and demonstrates the capacity to participate in a cross-site evaluation. The applicant's provision of a clear statement of mission, goals, measurable (outcome) objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable, and clear statements of expected results. (25 points)

(3) The capacity of the applicant to implement the program, including personnel and other resources, and the applicant's experience and expertise in providing programs for adolescents. (10 points)

(4) The applicant's presentation of a detailed and viable plan to involve parents, and/or other family members, that includes a description of the proposed activities, as well as strategies for recruitment and retention. (10 points)

(5) The population the project proposes to serve, including ethnic composition, number of adolescent and pre-adolescent clients, family members and community members. [Healthy People 2010 is a set of health objectives for the Nation to achieve over the first decade of the new century. The two goals of Healthy People 2010 are to increase quality of years of healthy life and to eliminate health disparities. In evaluating this criterion, priority will be given to programs which serve minority populations in order to eliminate health disparities.] (10 points)

(6) The community commitment to, and involvement in, planning and implementation of the project, as demonstrated by letters of commitment and willingness to participate in the project's implementation, acceptance of referrals, etc. (10 points)

(7) The applicant's presentation of the need for the project, including the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents within this geographic area. (10 points)

Review and Selection Process

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs (DASPA). In making these decisions, the DASPA will take into account the extent to which applications recommended for approval

will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and other factors including:

(1) Recommendations and scores submitted by the review panels;

(2) The geographic area to be served, particularly the needs of rural areas;

(3) The reasonableness of the estimated cost of the project based on factors such as the incidence of adolescent pregnancy in the geographic area to be served and the availability of services for adolescents in this geographic area;

(4) The adequacy of the evaluation plan, including incorporation of the six evaluation criteria listed in the "Evaluation" section of this announcement, and the demonstrated ability to participate successfully in a cross-site evaluation; and

(5) The usefulness for policymakers and service providers of the proposed project and its potential for replication.

VI. Award Administration Information

Award Notices

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, the applicant's authorized representative will be notified of the outcome of their application by postal mail. The Notice of Grant Award is the official document notifying an applicant that an application has been approved for funding, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Administrative and National Policy Requirements

The regulations set out in 45 CFR parts 74 and 92, are the Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

The Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their sub-recipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB homepage at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Reporting Requirements

Applicants funded under this grant announcement will be required to electronically submit an End-of-Year Program, Evaluation and Financial report 90 days after the grant budget period ends. The Project Director and Evaluator are expected to attend an annual OAPP sponsored conference, as well as other OAPP sponsored training.

VII. Other Information

Technical Assistance

The OAPP has scheduled a series of technical assistance workshops to help prospective applicants at no cost. At each of the one-day workshops, the public will be able to learn more about the purposes and requirements of the Title XX program, how to apply for funds under this program announcement, program eligibility requirements, the application selection process, and considerations that might help to improve the quality of grant applications. The OAPP encourages applicants to send a financial representative from their agency to the workshop. All participants must preregister using the form at *http://opa.osophs.dhhs.gov* or you may obtain a registration form from the OAPP at (301) 594–4004. Written requests for registration forms may be faxed to (301) 594–5981. The address of workshop locations and logistical information will be faxed or e-mailed back to you upon receipt of your registration. The sessions are tentatively scheduled for the week of April 26–April 30, 2004 in the following locations:

Atlanta, GA; Boston, MA; Chicago, IL; Dallas, TX; Dulles, VA; San Francisco, CA.

Please check the OPA Web site for updates.

In addition to the technical assistance workshops, a free interactive computer based technical assistance program is available to instruct applicants in the Title XX grant writing process. The Computer Based Technical Assistance Program can be downloaded at the OPA website at *http://opa.osophs.dhhs.gov.* If you do not have access to the Internet, a CD–Rom is included in the hard copy of the application kit which can be obtained from the OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; (301) 594–0758.

Dated: March 17, 2004.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 04–7627 Filed 4–2–04; 8:45 am]

BILLING CODE 4150–30–P

Federal Register

Monday,
April 5, 2004

Part VIII

Department of Education

Improving Literacy Through School Libraries Program Overview Information; Final Clarification of Eligible Local Activities and Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notices

DEPARTMENT OF EDUCATION

RIN 1810–ZA09

Notice of Final Clarification of Eligible Local Activities for Improving Literacy Through School Libraries Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

SUMMARY: The Secretary clarifies the eligible local professional development activities under the Improving Literacy Through School Libraries Program so that school library media specialists can address not only the needs of preschool children but also those of children in grades K–3. The Secretary will use the clarification for the FY 2004 competition and in later years.

EFFECTIVE DATE: This clarification is effective May 5, 2004.

FOR FURTHER INFORMATION CONTACT: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue, SW., 20202–6200. Telephone: (202) 401–3751, or via the Internet: *irene.harwarth@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This clarification of eligible local activities is established to allow professional development activities for library media specialists to better address the reading needs of students in grades K–3.

We published a notice of proposed priority and clarification of eligible local activities for this program in the **Federal Register** on January 13, 2004 (69 FR 1975). After considering the comments received, the Secretary is clarifying the eligible local activities for the program. The Secretary will not establish the proposed competitive preference priority that reflected the importance of mastering reading skills in grades K–3. Instead, the Secretary announces an invitational priority for the FY 2004 competition as set forth in a notice inviting applications for this program published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority and clarification of eligible local activities, 15 parties submitted comments on the proposed priority and clarification. An analysis of the comments and of the withdrawal of the competitive preference priority follows.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Clarification of Eligible Local Activities

Comments: Several commenters supported the clarification of eligible local activities that allowed services to benefit grades K–3 as well as preschool. The commenters further recommended that professional development benefiting grades 4–12 also be made an eligible local activity.

Discussion: The statute authorizing the Improving Literacy Through School Libraries Program allows funds to be used for a number of activities designed to improve student literacy skills and academic achievement through the improvement of school libraries. Our interpretation of the program statute is that Congress intended that funds under this program be used to benefit children in any of the grades K–12 with respect to all of the authorized program activities, except professional development. This is because the statutory provision authorizing the use of funds for professional development, unlike other comparable statutory provisions, speaks specifically of professional development only to benefit library media specialists that serve preschool age children. The statute's legislative history, however, supports the use of funds for professional development to benefit children in grades K–3, as well as preschool children. Therefore, while the legislative history supports professional development benefiting grades K–3, it also indicates that it is not preferable to interpret the statute even more broadly to allow professional development benefiting grades 4–12.

Changes: None.

Competitive Preference Priority

Comments: Some commenters were supportive of the proposed competitive preference priority that would award an extra five points to projects primarily serving grades K–3 ("primarily" means that more than 50 percent of an applicant's proposed budget would be used for grades K–3). Other commenters were critical of the competitive preference priority. Some commenters stressed that students in grades higher than K–3 are also at risk academically, and that funds may be needed to respond to higher standards and statewide assessments at grades 4–12. Other commenters stated that funds are necessary to sustain academic gains from strong reading programs already established at the K–3 level.

Discussion: After considering public comment, the Secretary believes that it is unnecessary to establish a competitive preference priority because the Secretary would not wish to discourage applications that meet the needs of grades 4–12. Instead, an invitational priority is established in the notice inviting applications for FY 2004, published elsewhere in this issue of the **Federal Register**.

Changes: No competitive preference priority will be established.

Clarification of Eligible Local Activities

The Secretary allows grantees to conduct professional development activities for school library media specialists that further the purposes of the program, not only as related to preschool education, but also related to education benefiting children in grades K–3. This is consistent with our interpretation of the statute and its legislative history. The Secretary believes that allowing professional development for school library media specialists benefiting children from preschool through grade 3 can help link projects under this program with efforts such as those funded under the Early Reading First program authorized by section 1221 *et seq.* of the Elementary and Secondary Education Act of 1965, as amended (ESEA), that benefit teachers of preschool children, and under the Reading First program authorized by section 1201 *et seq.* of the ESEA that benefit teachers of K–3 children. Professional development for school library media specialists that serve children from preschool through grade 3 will assist these specialists and help them better meet the needs of students and fellow educators.

Executive Order 12866

This clarification of eligible local activities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the clarification of eligible local activities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this clarification of eligible local activities, we have determined that the benefits of the

clarification of eligible local activities justify the costs.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98 and 99.

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You may also view this document in text at the Applicant Information link of the following site: *http://www.ed.gov/programs/lsl.*

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(Catalog of Federal Domestic Assistance Number 84.364A Improving Literacy Through School Libraries Program)

Program Authority: 20 U.S.C. 6383.

Dated: March 31, 2004.

Raymond J. Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–7634 Filed 4–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Improving Literacy Through School Libraries Program Overview Information; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.364A

DATES: Applications Available: April 5, 2004.

Deadline for Notice of Intent to Apply: April 27, 2004.

Deadline for Transmittal of Applications: May 20, 2004.

Deadline for Intergovernmental Review: July 19, 2004.

Eligible Applicants: Local Educational Agencies (LEAs) in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line. A list of LEAs with their family poverty rates is posted on our Web site at: *http://www.ed.gov/programs/lsl/eligibility.html.*

Estimated Available Funds: $19.8 million.

Estimated Range of Awards: $30,000 to $350,000.

Note: Actual award amounts will be based on the number of schools and students served by the project.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 200.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

FULL TEXT OF ANNOUNCEMENT

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; well-equipped, technologically advanced school library media centers; and well-trained, professionally certified school library media specialists.

Clarification of Eligible Local Activities: Applicants may propose professional development activities for school library media specialists that further the purposes of the program not only as related to preschool education, but also as related to education benefiting children in grades K–3. (*See* the notice of final clarification of eligible local activities for this program, published elsewhere in this issue of the **Federal Register**.)

Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2004 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Under this priority the Secretary strongly encourages applicants to focus their efforts on elementary schools to maximize the impact of the project on improving reading achievement.

Program Authority: 20 U.S.C. 6383.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98 and 99. (b) The notice of final clarification of eligible local activities, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $19.8 million.

Estimated Range of Awards: $30,000 to $350,000.

Estimated Average Size of Awards: $100,000.

Note: Actual award amounts will be based on the number of schools and students served by the project.

Estimated Number of Awards: 200.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line. A list of LEAs with their family poverty rates is posted on our Web site at: *http://www.ed.gov/programs/lsl/eligibility.html.*

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching, but does involve supplement-not-supplant funding provisions. Funds made available under this program shall be used to supplement, and not supplant, other Federal, State, and local funds expended to carry out activities relating to library, technology, or professional development activities (20 U.S.C. 6383(i)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD

20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*. If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.364A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

You may obtain an application package for this program via the Internet at the following address: *http://www.ed.gov/programs/lsl/applicant.html*

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: We strongly encourage each potential applicant to notify us by April 27, 2004 of your intent to submit an application for funding. We will be able to develop a more efficient process for reviewing grant applications if we have an estimate of the number of entities that intend to apply for funding under this competition. Notifications should be sent by e-mail to the following Internet address: *LSL@ed.gov*.

Please put "Notice of Intent" in the subject line. Applicants that do not provide this e-mail notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of no more than 15 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative; including titles and headings, but excluding footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; or the one-page abstract and the resumes.

3. *Submission Dates and Times:*

Applications Available: April 5, 2004.

Deadline for Notice of Intent to Apply: April 27, 2004.

Deadline for Transmittal of Applications: May 20, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 19, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Improving Literacy Through School Libraries Program—CFDA Number 84.364A is one of the programs included in the pilot project. If you are an applicant under the Improving Literacy Through School Libraries Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you

elect to participate in the e-Application pilot for the Improving Literacy Through School Libraries Program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under For Further Information Contact (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for The Improving Literacy Through School Libraries Program at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:*

We use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

We evaluate an application by determining how well the proposed project meets the following criteria:

(a) *Meeting the purpose of the statute* (10 points). How well the proposed project addresses the intended outcome of the statute to improve student reading skills and academic achievement by providing students with increased access to up-to-date school library materials; a well-equipped, technologically advanced school library media center; and well-trained, professionally certified school library media specialists.

(b) *Need for school library resources* (10 points). How well the applicant demonstrates the need for school library media improvement, based on the age and condition of school library media resources, including: book collections; access of school library media centers to advanced technology; and the availability of well-trained, professionally certified school library media specialists, in schools served by the applicant.

(c) *Use of funds* (50 points). How well the applicant will use the funds made available through the grant to carry out one or more of the following activities that meet its demonstrated needs—

(1) Acquiring up-to-date school library media resources, including books.

(2) Acquiring and using advanced technology, incorporated into the curricula of the school, to develop and enhance the information literacy, information retrieval, and critical thinking skills of students.

(3) Facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries, where possible.

(4) Providing professional development for school library media specialists, that improves literacy in grades K–3 as well as professional development for school library media specialists as described in section 1222(d)(2) of the ESEA (as described in the clarification of eligible local activities as published in the notice of final clarification of eligible local activities published elsewhere in this issue of the **Federal Register**) and providing activities that foster increased collaboration between school library media specialists, teachers, and administrators.

(5) Providing students with access to school libraries during non-school hours, including the hours before and after school, during weekends, and during summer vacation periods.

(d) *Use of scientifically based research* (10 points). How well the applicant will use programs and materials that are grounded in scientifically based research, as defined in section 9101(37) of the ESEA, in carrying out one or more of the activities described under criterion (c).

(e) *Broad-based involvement and coordination* (10 points). How well the applicant will extensively involve school library media specialists, teachers, administrators, and parents in the proposed project activities and effectively coordinate the funds and activities provided under this program with other literacy, library, technology, and professional development funds and activities.

(f) *Evaluation of quality and impact* (10 points).

How well the applicant will collect and analyze data on the quality and impact of the proposed project activities, including the extent to which the availability of, the access to, and the use of up-to-date school library media resources in the elementary schools and secondary schools served by the applicant were increased; and the impact on improving the reading skills of students.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is the equitable distribution of grants across geographic regions and among LEAs serving urban and rural areas. Contingent upon the availability of funds and the receipt of a sufficient number of high quality applications, we may make additional awards in FY 2005 from the rank-ordered list of unfunded applications from this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary.

4. *Performance Measures:* In response to the Government Performance and Results Act(GPRA), the Department developed two measures for evaluating the overall effectiveness of the Improving Literacy Through School Libraries Program. These measures gauge improvement in student achievement and resources in the schools and districts served by the Improving Literacy Through School Libraries Program by assessing increases in: (1) The percentage of participating schools and districts that exceed state targets for reading achievement for all students; and (2) the school library

media collections at participating schools, compared to schools not participating in the program.

The Department will collect data for these measures from grantees' annual performance reports and other existing data sources.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Irene Harwarth or Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W104, Washington, DC, 20202–6200. Telephone: (202) 401–3751 (Irene Harwarth) or (202) 260–1091 (Beth Fine) or by e-mail: *LSL@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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VIII. Other Information

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Dated: March 31, 2004.

Raymond J. Simon,

Assistant Secretary for Elementary and Secondary, Education.

[FR Doc. 04–7635 Filed 4–2–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Unique contract and order identifier numbers; published 4-5-04
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dassault; published 3-1-04
Pratt & Whitney Canada; published 3-1-04
TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Household goods transportation; consumer protection regulations; published 3-5-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Genetically engineered organisms; importation, interstate movement, and enviromental release; comments due by 4-13-04; published 3-29-04 [FR 04-07008]
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Bovine spongiform encephalopathy policies—
Advanced meat/bone separation machinery and meat recovery systems; use criteria; comments due by 4-12-04; published 1-12-04 [FR 04-00626]
Specified risk materials use for human food, prohibition; and non-ambulatory disabled cattle, disposition requirements; comments due by 4-12-04; published 1-12-04 [FR 04-00625]
Stunning devices used to immobilize cattle during slaughter; prohibition; comments due by 4-12-04; published 1-12-04 [FR 04-00624]
AGRICULTURE DEPARTMENT
Rural Utilities Service
Electrical standards and specifications:
12.47/7.2kV line construction; specifications and drawings; incorporation by reference; comments due by 4-12-04; published 2-12-04 [FR 04-03114]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered Species Act:
Joint counterpart consultation regulations; comments due by 4-16-04; published 3-31-04 [FR 04-07284]
COMMERCE DEPARTMENT
Patent and Trademark Office
Practice and procedure:
Representation of others before PTO; comments due by 4-12-04; published 1-29-04 [FR 04-01888]
COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 4-12-04; published 3-11-04 [FR 04-05510]
Texas; comments due by 4-12-04; published 3-11-04 [FR 04-05511]
Virginia; comments due by 4-14-04; published 3-15-04 [FR 04-05637]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aldicarb, atrazine, cacodylic acid, carbofuran, et al.; comments due by 4-12-04; published 2-11-04 [FR 04-02956]
Thifensulfuron methyl; comments due by 4-13-04; published 2-13-04 [FR 04-03230]
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-16-04; published 3-17-04 [FR 04-05873]
National priorities list update; comments due by 4-16-04; published 3-17-04 [FR 04-05875]
National priorities list update; comments due by 4-16-04; published 3-17-04 [FR 04-05874]
FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Florida; comments due by 4-12-04; published 3-2-04 [FR 04-04619]
Television stations; table of assignments:
Florida; comments due by 4-12-04; published 3-2-04 [FR 04-04620]
FEDERAL TRADE COMMISSION
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003:

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 1997/P.L. 108–212

Unborn Victims of Violence Act of 2004 (Apr. 1, 2004; 118 Stat. 568)

H.R. 3724/P.L. 108–213

Energy Efficient Housing Technical Correction Act (Apr. 1, 2004; 118 Stat. 571)

S. 1881/P.L. 108–214

Medical Devices Technical Corrections Act (Apr. 1, 2004; 118 Stat. 572)

Last List April 2, 2004

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-052-00001-9)	9.00	[4]Jan. 1, 2004
3 (2002 Compilation and Parts 100 and 101)	(869-050-00002-4)	32.00	[1] Jan. 1, 2003
4	(869-052-00003-5)	10.00	Jan. 1, 2004
5 Parts:			
1-699	(869-052-00004-3)	60.00	Jan. 1, 2004
700-1199	(869-052-00005-1)	50.00	Jan. 1, 2004
1200-End	(869-050-00006-7)	58.00	Jan. 1, 2003
6	(869-052-00007-8)	10.50	Jan. 1, 2004
7 Parts:			
1-26	(869-052-00008-6)	44.00	Jan. 1, 2004
27-52	(869-050-00008-3)	47.00	Jan. 1, 2003
53-209	(869-052-00010-8)	37.00	Jan. 1, 2004
210-299	(869-050-00010-5)	59.00	Jan. 1, 2003
300-399	(869-050-00011-3)	43.00	Jan. 1, 2003
400-699	(869-052-00013-2)	42.00	Jan. 1, 2004
700-899	(869-050-00013-0)	42.00	Jan. 1, 2003
*900-999	(869-052-00015-9)	60.00	Jan. 1, 2004
1000-1199	(869-052-00016-7)	22.00	Jan. 1, 2004
1200-1599	(869-052-00017-5)	61.00	Jan. 1, 2004
1600-1899	(869-050-00017-2)	61.00	Jan. 1, 2003
1900-1939	(869-050-00018-1)	29.00	[4] Jan. 1, 2003
1940-1949	(869-050-00019-9)	47.00	Jan. 1, 2003
1950-1999	(869-052-00021-3)	46.00	Jan. 1, 2004
2000-End	(869-052-00022-1)	50.00	Jan. 1, 2004
8	(869-052-00023-0)	63.00	Jan. 1, 2004
9 Parts:			
1-199	(869-050-00023-7)	58.00	Jan. 1, 2003
200-End	(869-052-00025-6)	58.00	Jan. 1, 2004
10 Parts:			
1-50	(869-052-00026-4)	61.00	Jan. 1, 2004
51-199	(869-050-00026-1)	56.00	Jan. 1, 2003
200-499	(869-052-00028-1)	46.00	Jan. 1, 2004
500-End	(869-052-00029-9)	62.00	Jan. 1, 2004
11	(869-050-00029-6)	38.00	Feb. 3, 2003
12 Parts:			
1-199	(869-052-00031-1)	34.00	Jan. 1, 2004
200-219	(869-050-00031-8)	38.00	Jan. 1, 2003
220-299	(869-052-00033-7)	61.00	Jan. 1, 2004
300-499	(869-052-00034-5)	47.00	Jan. 1, 2004
500-599	(869-052-00035-3)	39.00	Jan. 1, 2004
600-899	(869-050-00035-1)	54.00	Jan. 1, 2003
900-End	(869-052-00037-0)	50.00	Jan. 1, 2004
13	(869-052-00038-8)	55.00	Jan. 1, 2004
14 Parts:			
1-59	(869-052-00039-6)	63.00	Jan. 1, 2004
60-139	(869-050-00039-3)	58.00	Jan. 1, 2003
140-199	(869-052-00041-8)	30.00	Jan. 1, 2004
200-1199	(869-052-00042-6)	50.00	Jan. 1, 2004
1200-End	(869-052-00043-4)	45.00	Jan. 1, 2004
15 Parts:			
0-299	(869-052-00044-2)	40.00	Jan. 1, 2004
*300-799	(869-052-00045-1)	60.00	Jan. 1, 2004
*800-End	(869-052-00046-9)	42.00	Jan. 1, 2004
16 Parts:			
0-999	(869-050-00046-6)	47.00	Jan. 1, 2003
1000-End	(869-052-00048-5)	60.00	Jan. 1, 2004
17 Parts:			
1-199	(869-050-00049-1)	50.00	Apr. 1, 2003
200-239	(869-050-00050-4)	58.00	Apr. 1, 2003
240-End	(869-050-00051-2)	62.00	Apr. 1, 2003
18 Parts:			
1-399	(869-050-00052-1)	62.00	Apr. 1, 2003
400-End	(869-050-00053-9)	25.00	Apr. 1, 2003
19 Parts:			
1-140	(869-050-00054-7)	60.00	Apr. 1, 2003
141-199	(869-050-00055-5)	58.00	Apr. 1, 2003
200-End	(869-050-00056-3)	30.00	Apr. 1, 2003
20 Parts:			
1-399	(869-050-00057-1)	50.00	Apr. 1, 2003
400-499	(869-050-00058-0)	63.00	Apr. 1, 2003
500-End	(869-050-00059-8)	63.00	Apr. 1, 2003
21 Parts:			
1-99	(869-050-00060-1)	40.00	Apr. 1, 2003
100-169	(869-050-00061-0)	47.00	Apr. 1, 2003
170-199	(869-050-00062-8)	50.00	Apr. 1, 2003
200-299	(869-050-00063-6)	17.00	Apr. 1, 2003
300-499	(869-050-00064-4)	29.00	Apr. 1, 2003
500-599	(869-050-00065-2)	47.00	Apr. 1, 2003
600-799	(869-050-00066-1)	15.00	Apr. 1, 2003
800-1299	(869-050-00067-9)	58.00	Apr. 1, 2003
1300-End	(869-050-00068-7)	22.00	Apr. 1, 2003
22 Parts:			
1-299	(869-050-00069-5)	62.00	Apr. 1, 2003
300-End	(869-050-00070-9)	44.00	Apr. 1, 2003
23	(869-050-00071-7)	44.00	Apr. 1, 2003
24 Parts:			
0-199	(869-050-00072-5)	58.00	Apr. 1, 2003
200-499	(869-050-00073-3)	50.00	Apr. 1, 2003
500-699	(869-050-00074-1)	30.00	Apr. 1, 2003
700-1699	(869-050-00075-0)	61.00	Apr. 1, 2003
1700-End	(869-050-00076-8)	30.00	Apr. 1, 2003
25	(869-050-00077-6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0-1-1.60	(869-050-00078-4)	49.00	Apr. 1, 2003
§§ 1.61-1.169	(869-050-00079-2)	63.00	Apr. 1, 2003
§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
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§§ 1.401-1.440	(869-050-00082-2)	61.00	Apr. 1, 2003
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501-1.640	(869-050-00084-9)	49.00	Apr. 1, 2003
§§ 1.641-1.850	(869-050-00085-7)	60.00	Apr. 1, 2003
§§ 1.851-1.907	(869-050-00086-5)	60.00	Apr. 1, 2003
§§ 1.908-1.1000	(869-050-00087-3)	60.00	Apr. 1, 2003
§§ 1.1001-1.1400	(869-050-00088-1)	61.00	Apr. 1, 2003
§§ 1.1401-1.1503-2A	(869-050-00089-0)	50.00	Apr. 1, 2003
§§ 1.1551-End	(869-050-00090-3)	50.00	Apr. 1, 2003
2-29	(869-050-00091-1)	60.00	Apr. 1, 2003
30-39	(869-050-00092-0)	41.00	Apr. 1, 2003
40-49	(869-050-00093-8)	26.00	Apr. 1, 2003
50-299	(869-050-00094-6)	41.00	Apr. 1, 2003
300-499	(869-050-00095-4)	61.00	Apr. 1, 2003

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500-599	(869-050-00096-2)	12.00	[5]Apr. 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003
27 Parts:			
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003
28 Parts:			
0-42	(869-050-00100-4)	61.00	July 1, 2003
43-End	(869-050-00101-2)	58.00	July 1, 2003
29 Parts:			
0-99	(869-050-00102-1)	50.00	July 1, 2003
100-499	(869-050-00103-9)	22.00	July 1, 2003
500-899	(869-050-00104-7)	61.00	July 1, 2003
900-1899	(869-050-00105-5)	35.00	July 1, 2003
1900-1910 (§§ 1900 to 1910.999)	(869-050-00106-3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869-050-00107-1)	46.00	July 1, 2003
1911-1925	(869-050-00108-0)	30.00	July 1, 2003
1926	(869-050-00109-8)	50.00	July 1, 2003
1927-End	(869-050-00110-1)	62.00	July 1, 2003
30 Parts:			
1-199	(869-050-00111-0)	57.00	July 1, 2003
200-699	(869-050-00112-8)	50.00	July 1, 2003
700-End	(869-050-00113-6)	57.00	July 1, 2003
31 Parts:			
0-199	(869-050-00114-4)	40.00	July 1, 2003
200-End	(869-050-00115-2)	64.00	July 1, 2003
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1-39, Vol. II		19.00	[2]July 1, 1984
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1-190	(869-050-00116-1)	60.00	July 1, 2003
191-399	(869-050-00117-9)	63.00	July 1, 2003
400-629	(869-050-00118-7)	50.00	July 1, 2003
630-699	(869-050-00119-5)	37.00	[7]July 1, 2003
700-799	(869-050-00120-9)	46.00	July 1, 2003
800-End	(869-050-00121-7)	47.00	July 1, 2003
33 Parts:			
1-124	(869-050-00122-5)	55.00	July 1, 2003
125-199	(869-050-00123-3)	61.00	July 1, 2003
200-End	(869-050-00124-1)	50.00	July 1, 2003
34 Parts:			
1-299	(869-050-00125-0)	49.00	July 1, 2003
300-399	(869-050-00126-8)	43.00	[7]July 1, 2003
400-End	(869-050-00127-6)	61.00	July 1, 2003
35	(869-050-00128-4)	10.00	[6]July 1, 2003
36 Parts			
1-199	(869-050-00129-2)	37.00	July 1, 2003
200-299	(869-050-00130-6)	37.00	July 1, 2003
300-End	(869-050-00131-4)	61.00	July 1, 2003
37	(869-050-00132-2)	50.00	July 1, 2003
38 Parts:			
0-17	(869-050-00133-1)	58.00	July 1, 2003
18-End	(869-050-00134-9)	62.00	July 1, 2003
39	(869-050-00135-7)	41.00	July 1, 2003
40 Parts:			
1-49	(869-050-00136-5)	60.00	July 1, 2003
50-51	(869-050-00137-3)	44.00	July 1, 2003
52 (52.01-52.1018)	(869-050-00138-1)	58.00	July 1, 2003
52 (52.1019-End)	(869-050-00139-0)	61.00	July 1, 2003
53-59	(869-050-00140-3)	31.00	July 1, 2003
60 (60.1-End)	(869-050-00141-1)	58.00	July 1, 2003
60 (Apps)	(869-050-00142-0)	51.00	[8]July 1, 2003
61-62	(869-050-00143-8)	43.00	July 1, 2003
63 (63.1-63.599)	(869-050-00144-6)	58.00	July 1, 2003
63 (63.600-63.1199)	(869-050-00145-4)	50.00	July 1, 2003
63 (63.1200-63.1439)	(869-050-00146-2)	50.00	July 1, 2003
63 (63.1440-End)	(869-050-00147-1)	64.00	July 1, 2003
64-71	(869-050-00148-9)	29.00	July 1, 2003
72-80	(869-050-00149-7)	61.00	July 1, 2003
81-85	(869-050-00150-1)	50.00	July 1, 2003
86 (86.1-86.599-99)	(869-050-00151-9)	57.00	July 1, 2003
86 (86.600-1-End)	(869-050-00152-7)	50.00	July 1, 2003
87-99	(869-050-00153-5)	60.00	July 1, 2003
100-135	(869-050-00154-3)	43.00	July 1, 2003
136-149	(869-150-00155-1)	61.00	July 1, 2003
150-189	(869-050-00156-0)	49.00	July 1, 2003
190-259	(869-050-00157-8)	39.00	July 1, 2003
260-265	(869-050-00158-6)	50.00	July 1, 2003
266-299	(869-050-00159-4)	50.00	July 1, 2003
300-399	(869-050-00160-8)	42.00	July 1, 2003
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425-699	(869-050-00162-4)	61.00	July 1, 2003
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790-End	(869-050-00164-1)	58.00	July 1, 2003
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1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
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9		13.00	[3]July 1, 1984
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18, Vol. III, Parts 20-52		13.00	[3]July 1, 1984
19-100		13.00	[3]July 1, 1984
1-100	(869-050-00165-9)	23.00	[7]July 1, 2003
101	(869-050-00166-7)	24.00	July 1, 2003
102-200	(869-050-00167-5)	50.00	July 1, 2003
201-End	(869-050-00168-3)	22.00	July 1, 2003
42 Parts:			
1-399	(869-050-00169-1)	60.00	Oct. 1, 2003
400-429	(869-050-00170-5)	62.00	Oct. 1, 2003
430-End	(869-050-00171-3)	64.00	Oct. 1, 2003
43 Parts:			
1-999	(869-050-00172-1)	55.00	Oct. 1, 2003
1000-end	(869-050-00173-0)	62.00	Oct. 1, 2003
44	(869-050-00174-8)	50.00	Oct. 1, 2003
45 Parts:			
1-199	(869-050-00175-6)	60.00	Oct. 1, 2003
200-499	(869-050-00176-4)	33.00	[9]Oct. 1, 2003
500-1199	(869-050-00177-2)	50.00	Oct. 1, 2003
1200-End	(869-050-00178-1)	60.00	Oct. 1, 2003
46 Parts:			
1-40	(869-050-00179-9)	46.00	Oct. 1, 2003
41-69	(869-050-00180-2)	39.00	Oct. 1, 2003
70-89	(869-050-00181-1)	14.00	Oct. 1, 2003
90-139	(869-050-00182-9)	44.00	Oct. 1, 2003
140-155	(869-050-00183-7)	25.00	[9]Oct. 1, 2003
156-165	(869-050-00184-5)	34.00	[9]Oct. 1, 2003
166-199	(869-050-00185-3)	46.00	Oct. 1, 2003
200-499	(869-050-00186-1)	39.00	Oct. 1, 2003
500-End	(869-050-00187-0)	25.00	Oct. 1, 2003
47 Parts:			
0-19	(869-050-00188-8)	61.00	Oct. 1, 2003
20-39	(869-050-00189-6)	45.00	Oct. 1, 2003
40-69	(869-050-00190-0)	39.00	Oct. 1, 2003
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48 Chapters:			
1 (Parts 1-51)	(869-050-00193-4)	63.00	Oct. 1, 2003
1 (Parts 52-99)	(869-050-00194-2)	50.00	Oci. 1, 2003
2 (Parts 201-299)	(869-050-00195-1)	55.00	Oct. 1, 2003
3-6	(869-050-00196-9)	33.00	Oct. 1, 2003
7-14	(869-050-00197-7)	61.00	Oct. 1, 2003
15-28	(869-050-00198-5)	57.00	Oct. 1, 2003
29-End	(869-050-00199-3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1-99	(869-050-00200-1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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